

**TITLE 38, CHAPTER 5, ARTICLE 6**

**AND RELATED STATUTES**

**ARIZONA REVISED STATUTES**

**AS AMENDED 2007**

**CORRECTIONS OFFICER RETIREMENT PLAN**

**STATE OF ARIZONA**

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CORRECTIONS OFFICER RETIREMENT PLAN**

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**CORRECTIONS OFFICER RETIREMENT PLAN**  
**TITLE 38, CHAPTER 5, ARTICLE 6**  
**ARIZONA REVISED STATUTES AS AMENDED 2005**

**38-881.        Definitions**

In this article, unless the context otherwise requires:

1. "Accidental disability" means a physical or mental condition that the local board finds totally and permanently prevents an employee from performing a reasonable range of duties within the employee's department, was incurred in the performance of the employee's duties and was the result of any of the following:
  - (a) Physical contact with inmates, prisoners, parolees or persons on probation.
  - (b) Responding to a confrontational situation with inmates, prisoners, parolees or persons on probation.
  - (c) A job related motor vehicle accident while on official business for the employee's employer. A job related motor vehicle accident does not include an accident that occurs on the way to or from work. Persons found guilty of violating a personnel rule, a rule established by the employee's employer or a state or federal law in connection with a job related motor vehicle accident do not meet the conditions for accidental disability.
2. "Accumulated member contributions" means the sum of all member contributions deducted from a member's salary and paid to the fund, plus member contributions transferred to the fund by another retirement plan covering public employees of this state, plus previously withdrawn accumulated member contributions which are repaid to the fund in accordance with this article, minus any benefits paid to or on behalf of a member.
3. "Alternate payee" means the spouse or former spouse of a participant as designated in a domestic relations order.
4. "Alternate payee's portion" means benefits that are payable to an alternate payee pursuant to a plan approved domestic relations order.
5. "Average monthly salary" means one-thirty-sixth of the aggregate amount of salary that is paid a member by a participating employer during a period of thirty-six consecutive months of service in which the member received the highest salary within the last one hundred twenty months of service. Average monthly salary means the aggregate amount of salary that is paid a member divided by the member's months of service if the member has less than thirty-six months of service. In the computation under this paragraph, a period of non-paid or partially paid industrial leave shall be considered based on the salary the employee would have received in the employee's job classification if the employee was not on industrial leave.
6. "Beneficiary" means an individual who is being paid or who has entitlement to the future payment of a pension on account of a reason other than the individual's membership in the retirement plan.
7. "Claimant" means a member, beneficiary or estate that files an application for benefits with the retirement plan.
8. "Credited service" means credited service transferred to the retirement plan from another retirement system or plan for public employees of this state, plus those compensated periods of service as a member of the retirement plan for which member contributions are on deposit in the fund.

9. "Cure period" means the ninety-day period in which a participant or alternate payee may submit an amended domestic relations order and request a determination, calculated from the time the plan issues a determination finding that a previously submitted domestic relations order did not qualify as a plan approved domestic relations order.
10. "Designated position" means:
  - (a) For a county:
    - (i) A county detention officer.
    - (ii) A non-uniformed employee of a sheriff's department whose primary duties require direct contact with inmates.
  - (b) For the state department of corrections and the department of juvenile corrections only the following specifically designated positions:
    - (i) Food service.
    - (ii) Nursing personnel.
    - (iii) Corrections physician assistant.
    - (iv) Therapist.
    - (v) Corrections dental assistant.
    - (vi) Hygienist.
    - (vii) Corrections medical assistant.
    - (viii) Correctional service officer, including assistant deputy warden, deputy warden, warden and superintendent.
    - (ix) State correctional program officer.
    - (x) Parole or community supervision officers.
    - (xi) Investigators.
    - (xii) Teachers.
    - (xiii) Institutional maintenance workers.
    - (xiv) Youth corrections officer.
    - (xv) Youth program officer.
    - (xvi) Behavioral health treatment unit managers.
    - (xvii) The director and assistant directors of the department of juvenile corrections and the superintendent of the state educational system for committed youth.
    - (xviii) The director, deputy directors and assistant directors of the state department of corrections.
    - (xix) Other positions designated by the local board of the state department of corrections or the local board of the department of juvenile corrections pursuant to § 38-891, subsection E.
  - (c) For a city or town, a city or town detention officer.

- (d) For an employer of an eligible group as defined in section 38-842, full-time dispatchers.
  - (e) For the judiciary, probation, surveillance, and juvenile detention officers.
11. "Determination" means a written document that indicates to a participant and alternate payee whether a domestic relations order qualifies as a plan approved domestic relations order.
  12. "Determination period" means the ninety-day period in which the plan must review a domestic relations order that is submitted by a participant or alternate payee to determine whether the domestic relations order qualifies as a plan approved domestic relations order, calculated from the time the plan mails a notice of receipt to the participant and alternate payee.
  13. "Domestic relations order" means an order of a court of this state that is made pursuant to the domestic relations laws of this state and that creates or recognizes the existence of an alternate payee's right to, or assigns to an alternate payee the right to, receive a portion of the benefits payable to a participant.
  14. "Employee" means a person determined by the local board to be employed by a participating employer in a designated position.
  15. "Employer" means an agency or department of this state or a political subdivision of this state which has one or more employees in a designated position.
  16. "Fund" means the corrections officer retirement plan fund.
  17. "Fund manager" means the fund manager of the public safety personnel retirement system.
  18. "Juvenile detention officer" means a juvenile detention officer responsible for the direct custodial supervision of juveniles who are detained in a county juvenile detention center.
  19. "Local board" means the retirement board of the employer that consists of persons appointed or elected to administer the plan as it applies to the employer's members in the plan.
  20. "Member" means any employee who meets all of the following qualifications:
    - (a) Who is a full-time paid person employed by a participating employer in a designated position.
    - (b) Who is receiving salary for personal services rendered to a participating employer or would be receiving salary except for an authorized leave of absence.
    - (c) Whose customary employment is at least forty hours each week and for more than six months in a calendar year.
  21. "Normal retirement date" means the first day of the calendar month immediately following an employee's completion of twenty years of service or, in the case of a dispatcher, twenty-five years of service, the employee's sixty-second birthday and completion of ten years of service or the month in which the sum of the employee's age and years of credited service equals eighty.
  22. "Notice of receipt" means a written document that is issued by the plan to a participant and alternate payee and that states that the plan has received a domestic relations order and a request for a determination that the domestic relations order is a plan approved domestic relations order .
  23. "Participant" means a member who is subject to a domestic relations order.
  24. "Participant's portion" means benefits that are payable to a participant pursuant to a plan approved domestic relations order.

25. "Participating employer" means an employer which the fund manager has determined to have one or more employees in a designated position or a county, city or town which has entered into a joinder agreement pursuant to section 38-902.
26. "Pension" means a series of monthly payments by the retirement plan.
27. "Personal representative" means the personal representative of a deceased alternate payee.
28. "Plan approved domestic relations order" means a domestic relations order that the plan approves as meeting all the requirements for a plan approved domestic relations order as otherwise prescribed in this article.
29. "Probation or surveillance officer" means an officer appointed pursuant to section 8-203, 12-251, or 12-259 but does not include other personnel, office assistants or support staff.
30. "Retired member" means an individual who is being paid a pension on account of the individual's membership in the retirement plan.
31. "Retirement" means termination of employment after a member has fulfilled all requirements for a pension.
32. "Retirement plan" or "plan" means the corrections officer retirement plan established by this article.
33. "Salary" means the base salary, shift differential pay and holiday pay paid a member in a designated position for personal services rendered to a participating employer on a regular monthly, semi-monthly or biweekly payroll basis. Salary includes amounts that are subject to deferred compensation or tax shelter agreements. Salary does not include payment for any remuneration or reimbursement other than as prescribed by this paragraph. For the purposes of this paragraph, "base salary" means the amount of compensation each member is regularly paid for personal services rendered to an employer before the addition of any extra monies, including overtime pay, shift differential pay, holiday pay, payments for the sale of compensatory time, fringe benefit pay and similar extra payments.
34. "Segregated funds" means the amount of benefits that would currently be payable to an alternate payee pursuant to a domestic relations order under review by the plan, or a domestic relations order submitted to the plan that failed to qualify as a plan approved domestic relations order, if the domestic relations order were determined to be a plan approved domestic relations order.
35. "Service" means employment rendered to a participating employer as an employee in a designated position. Any absence that is authorized by an employer, including any periods during which the employee is on an employer sponsored long-term disability program, is considered as service if the employee returns or is deemed by the employer to have returned to a designated position within the period of the authorized absence.
36. "Total and permanent disability" means a physical or mental condition that is not an accidental disability, that the local board finds totally and permanently prevents a member from engaging in any gainful employment and that is the direct and proximate result of the member's performance of the member's duty as an employee of a participating employer.

Added by Laws 1986, Ch. 325, § 1, effective August 13, 1986, retroactively effective to July 1, 1986. Amended by Laws 1989, Ch. 310, § 12; Laws 1990, Ch. 272, § 1, effective retroactively to July 1, 1990; Laws 1991, Ch. 155, § 3; Laws 1991, Ch. 210, § 13; Laws 1992, Ch. 315, § 1; Laws 1993, Ch. 197, § 26; Laws 1993, Ch. 255, § 82, effective January 1, 1994; Laws 1995, Ch. 205, § 7; Laws 1995, Ch. 178, § 25; Laws 1996, Ch. 282, § 1; Laws 1997, Ch. 197, § 1; Laws 1997, Ch. 239, § 21; Laws 2001, Ch. 309, § 1; Laws 2002, Ch. 335, § 8; Laws 2005, Ch. 324, § 1; Laws 2006, Ch. 308, §§ 1 and 2; Laws 2006, Ch. 308, §13 and 14; Laws 2007, Ch. 87, § 5 and § 6.

Section 38-881, Arizona Revised Statutes, as amended by Laws 2006, Chapter 264, Section 14, and Chapter 308, Section 2, and Section 6 of this Act becomes effective on the date prescribed in Laws 2005, Chapter 324, Section 2 but only on the occurrence of the conditions prescribed by Laws 2005, Chapter 324, Section,

**38-882. Corrections officer retirement plan and fund; administration**

- A. The corrections officer retirement plan and the corrections officer retirement plan fund are established.
- B. The fund consists of the monies and assets generated by the operation of the retirement plan. The fund shall be used exclusively to pay benefits to and on behalf of members and beneficiaries in accordance with the provisions of this article and to pay the administration, operation and investment expenses of the plan and fund. In no case shall all or any portion of the fund revert or otherwise be paid to an employer.
- C. The fund manager is entitled to administer, manage and operate the plan and fund.

Added by Laws 1986, Ch. 325, § 1.

**38-883. Fund manager; powers and duties**

- A. The fund manager shall:
  - 1. Maintain records of the operation and administration of the plan and fund.
  - 2. Contract on a fee basis for an independent annual audit of the accounting records of the plan and fund and file a copy of the audit report with the auditor general.
  - 3. Employ on a fee basis an independent firm of actuaries to perform annual actuarial valuations for each participating employer of the plan and fund based on an actuarial cost method and actuarial assumptions recommended by the actuary and adopted by the fund manager. The actuarial valuations shall be performed by or under the direct supervision of an actuary who is a member of the American academy of actuaries. By November 1 of each year the fund manager shall provide a preliminary report and by December 15 of each year provide a final report to the governor, the speaker of the House of Representatives and the president of the senate on the contribution rate for the ensuing fiscal year.
  - 4. Invest and reinvest the monies and assets of the fund in accordance with the investment provisions of the public safety personnel retirement system. The fund manager may commingle securities and monies of the fund subject to the crediting of receipts and earnings and charging of payments to the account of the appropriate employer.
  - 5. Submit a detailed annual report of the operation and investment performance of the plan and fund to the governor, the legislature, and the members of the plan. The fund manager shall submit the annual report no later than six months after the end of the fiscal year to which it pertains.
- B. The fund manager may:
  - 1. Employ services it deems necessary, including legal services, for the operation and administration of the plan and fund.
  - 2. Utilize separate or commingled investment vehicles.
  - 3. Delegate authority to the administrator employed pursuant to section 38-848, subsection K, paragraph 6.

4. Appear before local boards and the courts and political subdivisions of this state through counsel or appointed representatives to protect the fund. The fund manager is not responsible for the actions or omissions of the local boards under this plan but may seek review or a rehearing of actions or omissions of local boards. The fund manager does not have a duty to review actions of the local boards but may do so, in its discretion, in order to protect the fund.
5. Perform all acts, whether or not expressly authorized, which it deems necessary and proper for the protection of the plan and fund.

Added by Laws 1986, Ch. 325, § 1. Amended by Laws 1990, Ch. 272, § 2; Laws 1997, Ch. 210, § 26, effective March 1, 1998; Laws 2005, Ch. 331, § 8.

**38-883.01. Qualified governmental excess benefit arrangement; definitions**

- A. The fund manager may establish a qualified governmental excess benefit arrangement for the sole purpose of enabling the fund manager to continue to apply the same formula for determining benefits payable to all employees covered by the plan whose benefits under the plan are limited by section 415 of the internal revenue code.
- B. The fund manager shall administer the qualified governmental excess benefit arrangement. The fund manager has full discretionary fiduciary authority to determine all questions arising in connection with the arrangement, including its interpretation and any factual questions arising under the arrangement.
- C. All members and retired members of the plan are eligible to participate in the qualified governmental excess benefit arrangement if their benefits under the plan would exceed the limitation imposed by section 415 of the internal revenue code.
- D. On or after the effective date of the qualified governmental excess benefit arrangement, the employer shall pay to each eligible member of the plan who retires on or after the effective date and to each retired member who retired before the effective date and that member's beneficiary, if required, a supplemental pension benefit equal to the amount by which the benefit that would have been payable under the plan, without regard to any provisions in the plan incorporating the limitation on benefits imposed by section 415 of the internal revenue code, exceeds the benefit actually payable taking into account the limitation imposed on the plan by section 415 of the internal revenue code. The fund manager shall compute and pay the supplemental pension benefits under the same terms and conditions and to the same person as the benefits payable to or on account of a retired member under the plan.
- E. The employer shall not fund benefits payable under the qualified governmental excess benefit arrangement. The employer shall pay benefits payable under the qualified governmental excess benefit arrangement out of the general assets of the employer. For administrative purposes, the employer may establish a grantor trust for the benefit of eligible members. The employer shall be treated as grantor of the trust for purposes of section 677 of the internal revenue code. The rights of any person to receive benefits under the qualified government excess benefit arrangement are limited to those of a general creditor of the employer.
- F. The terms and conditions contained in the plan, other than those relating to the benefit limitation imposed by section 415 of the internal revenue code, apply, unless the terms and conditions are inconsistent with the purpose of the qualified government excess benefit arrangement.
- G. For purposes of this section:
  1. "Internal revenue code" has the same meaning in section 42-1001.
  2. "Qualified governmental excess benefit arrangement" means a portion of the plan if:

- (a) the portion is maintained solely to provide to members of the plan that part of a member's annual benefit that is otherwise payable under the terms of the plan and that exceeds the limitations imposed by section 415 of the internal revenue code.
- (b) under that portion, a direct or indirect election to defer compensation is not provided at any time to the member.
- (c) excess benefits are not paid from a trust that is a part of the plan unless the trust is maintained solely for the purpose of providing excess benefits.

Added by Laws 1997, Ch. 239, § 22. Amended by Laws 1998, Ch. 1, § 113, effective January 1, 1999.

**38-884. Membership of retirement plan; termination; credited service**

- A. Each employee of a participating employer is a member of the plan unless the employee is receiving a pension from the plan. A person employed shall undergo a medical examination performed by a doctor or clinic appointed by the local board or, in the case of a state correctional officer who is employed by the state department of corrections, complete a physical examination pursuant to section 41-1822, subsection B. For the purposes of subsection B of this section, the doctor or clinic appointed by the local board may be the employer's regular employee or contractor.
- B. The purpose of the medical examination authorized by this section is to identify a member's physical or mental condition or injury that existed or occurred before the member's date of membership in the plan. Any employee who fails or refuses to submit to the medical examination prescribed in this section is deemed to waive all rights to disability benefits under this article. Medical examinations conducted under this article shall not be conducted or used for purposes of hiring, advancement, discharge, job training or other terms, conditions and privileges of employment unrelated to receipt or qualification for pension benefits or service credits from the fund. This subsection does not affect or impair the right of an employer to prescribe medical or physical standards for employees or prospective employees.
- C. If a member ceases to be an employee for any reason other than death or retirement, within twenty days after filing a completed application with the fund manager, the member is entitled to receive the following amounts, less any benefit payments the member has received and any amount the member may owe to the plan:
  - 1. If the member has less than five years of credited service with the plan, the member may withdraw the member's accumulated contributions from the plan.
  - 2. If the member has five or more years of credited service with the plan, the member may withdraw the member's accumulated contributions plus an amount equal to the amount determined as follows:
    - (a) 5.0 to 5.9 years of credited service, twenty-five per cent of all member contributions deducted from the member's salary pursuant to section 38-891, subsection B.
    - (b) 6.0 to 6.9 years of credited service, forty per cent of all member contributions deducted from the member's salary pursuant to section 38-891, subsection B.
    - (c) 7.0 to 7.9 years of credited service, fifty-five per cent of all member contributions deducted from the member's salary pursuant to section 38-891, subsection B.

- (d) 8.0 to 8.9 years of credited service, seventy per cent of all member contributions deducted from the member's salary pursuant to section 38-891, subsection B.
  - (e) 9.0 to 9.9 years of credited service, eighty-five per cent of all member contributions deducted from the member's salary pursuant to section 38-891, subsection B.
  - (f) 10.0 or more years of credited service, one hundred per cent of all member contributions deducted from the member's salary pursuant to section 38-891, subsection B.
- D. If a member has more than ten years of credited service with the plan, leaves the monies prescribed in subsection C of this section on account with the plan for more than thirty days after termination of employment and after that time period requests a refund of those monies, the member is entitled to receive the amount prescribed in subsection C of this section plus interest at a rate determined by the fund manager for each year computed from and after the member's termination of employment.
- E. If the refund includes monies that are an eligible rollover distribution and the member elects to have the distribution paid directly to an eligible retirement plan or individual retirement account or annuity and specifies the eligible retirement plan or individual retirement account or annuity to which the distribution is to be paid, the distribution shall be made in the form of a direct trustee-to-trustee transfer to the specified eligible retirement plan. The distribution shall be made in the form and at the time prescribed by the fund manager.
- F. Service shall be credited to a member's individual credited service account in accordance with rules the local board prescribes. In no case shall more than twelve months of credited service be credited on account of all service rendered by a member in any one year. In no case shall service be credited for any period during which the member is not employed in a designated position, except as provided by sections 38-921 and 38-922.
- G. Credited service is forfeited if the amounts prescribed in subsection C or D of this section are paid or are transferred in accordance with this section.
- H. If a former member becomes re-employed with the same employer within two years after the former member's termination date, a member may have forfeited credited service attributable to service rendered during a prior period of service as an employee restored on satisfaction of each of the following conditions:
1. The member files with the plan a written application for reinstatement of forfeited credited service within ninety days after again becoming an employee.
  2. The retirement fund is paid the total amount previously withdrawn pursuant to subsection C or D of this section plus compound interest from the date of withdrawal to the dates of repayment. Interest shall be computed at the rate of nine per cent for each year compounded each year from the date of withdrawal to the date of repayment. Forfeited credited service shall not be restored until complete payment is received by the fund.
  3. The required payment is completed within one year after returning to employee status.
- I. A present active member of the plan who received a refund of accumulated contributions from the plan pursuant to subsection C or D of this section and forfeited credited service pursuant to subsection G of this section may elect to redeem any part of that forfeited credited service by paying into the plan any amounts required pursuant to this subsection. A present active member who elects to redeem any part of forfeited credited service for which the member is deemed eligible by the fund manager shall pay into the plan the amounts previously paid or transferred as a refund of the member's accumulated contributions plus an amount, computed by the plan's

actuary that is necessary to equal the increase in the actuarial present value of projected benefits resulting from the redemption calculated using the actuarial methods and assumptions prescribed by the plan's actuary.

- J. The following conditions apply to a retired member who becomes an employee subsequent to retirement:
1. Payment of the retired member's pension shall be suspended until the retired member again ceases to be an employee. The amount of pension shall not be changed on account of service as an employee subsequent to retirement.
  2. The retired member shall not contribute to the fund and shall not accrue credited service.

Added by Laws 1986, Ch. 325, § 1. Amended by Laws 1990, Ch. 272, § 3; Laws 1992, Ch. 340, § 3; Laws 1994, Ch. 356, § 29; Laws 1995, Ch. 205, § 8; Laws 1997, Ch. 133, § 1; Laws 1999, Ch. 41, § 1; Laws 1999, Ch. 327, § 26; Laws 2006, Ch. 241 § 2, effective from June 30, 2008.

**38-885. Normal retirement; conditions and pension**

- A. A member may retire if the member:
1. Files a written application for normal retirement with the plan in the form prescribed by the plan.
  2. Ceases to be an employee before the date of retirement.
  3. Meets one of the age and service requirements for normal retirement prescribed in subsection B.
- B. A member is eligible for a normal retirement pension if the member satisfies one of the following requirements:
1. Is sixty-two years or older and has ten or more years of service.
  2. Has twenty or more years of service or in the case of a dispatcher, twenty-five years.
  3. The sum of the member's age and years of credited service equals at least eighty.
- C. A member who meets the requirements for a normal retirement pension and who has twenty years or twenty-five years, as applicable, of credited service is entitled to receive a pension that equals fifty per cent of the member's average monthly salary, except that:
1. If the member retires with more than twenty years of credited service the foregoing amount shall be increased by a monthly amount equal to two per cent of the member's average monthly salary multiplied by the number of the member's years of credited service in excess of twenty years, with pro rata increase for any fractional years, except that if a member retires with twenty-five or more years of credited service the foregoing amount shall be increased by a monthly amount equal to two and one-half per cent of the member's average monthly salary multiplied by the number of the member's years of credited service in excess of twenty years, with pro rata increase for any fractional year.
  2. If the member retires pursuant to subsection B but has less than twenty years of credited service, the member is entitled to receive a pension equal to the product of:
    - (a) Two and one-half per cent of the member's average monthly salary.
    - (b) The member's credited service.

- D. In no case shall the amount of a member's pension exceed eighty per cent of the member's average monthly salary. Such limitation does not preclude cost-of-living increases granted by the legislature.

Added by Laws 1986, Ch. 325, § 1. Amended by Laws 1989, Ch. 310, § 13; Laws 1994, Ch. 207, § 7, retroactively effective to July 1, 1994; Laws 1995, Ch. 205, § 9; Laws 1997, Ch. 197, § 2; Laws 2001, Ch. 309 § 2; Laws 2001, Ch. 380 § 12; Laws 2002, Ch. 241, § 8.

**38-885.01 Reverse deferred retirement option plan; purpose**

- A. A reverse deferred retirement option plan is established. The purpose of the reverse deferred retirement option plan is to add flexibility to the plan and to provide members who elect to participate in the reverse deferred retirement option plan access to a lump sum benefit in addition to their normal monthly retirement benefit on actual retirement.
- B. Beginning on July 1, 2006, through June 30, 2011, the fund manager shall offer the reverse deferred retirement option plan to members on a voluntary basis as an alternative method of benefit accrual under the plan.
- C. Any member who is eligible for a normal pension pursuant to section 38-885 and who has at least twenty-four years of credited service is eligible to participate in the reverse deferred retirement option plan.
- D. A member who elects to participate in the reverse deferred retirement option plan shall voluntarily and irrevocably:
1. Designate a reverse deferred retirement option plan date that is the first day of the calendar month immediately following a member's completion of twenty-four years of credited service or a date not more than sixty consecutive months before the date the member elects to participate in the reverse deferred retirement option plan, whichever is later.
  2. Agree to terminate employment on the date the member elects to participate in the reverse deferred option plan.
  3. Receive benefits from the plan on termination of employment at the same time and in the same manner as otherwise prescribed in this Article using the factors of credited service and average monthly salary in effect on the reverse deferred retirement option plan date.
- E. On election, a reverse deferred retirement option plan participation account is established within the plan on behalf of each reverse deferred retirement option plan participant. All benefits accrued pursuant to this Article shall be accounted for in the reverse deferred retirement option plan participation account. A reverse deferred retirement option plan participant does not have a claim on the assets of the plan with respect to the member's reverse deferred retirement option plan participation account and assets shall not be set aside for any reverse deferred retirement option plan participant that are separate from all other system assets.
- F. All amounts credited a member's reverse deferred retirement option plan participation account are fully vested.
- G. A member's reverse deferred retirement option plan participation account shall be credited with the following:
1. An amount that is credited as though accrued monthly from the reverse deferred retirement option plan date to the date the member elected to participate in the reverse deferred retirement option plan and that is computed in the same manner as a normal retirement benefit using the factors of credited service and average monthly salary in effect on the reverse deferred retirement option plan date.

2. An amount that is credited as though accrued monthly and that represents interest at a rate equal to the yield on a five year treasury note as of the first day of the month as published by the federal reserve board.
- H. Employee and employer contributions pursuant to section 38-891 that are deposited during the period of the reverse deferred retirement option plan are not eligible to be refunded to the employer or member.
  - I. The participant is not entitled to receive any amount prescribed by section 38-905 or 38-906 during the reverse deferred retirement option plan participation period.
  - J. The form of payment shall be a lump sum distribution. If allowed by the internal revenue service, the participant may elect to transfer the lump sum distribution to an eligible retirement plan or individual retirement account.
  - K. The reverse deferred retirement option plan shall not jeopardize in any way the tax qualified status of the plan under the rules of the internal revenue service. The fund manager may adopt additional provisions to the extent necessary or appropriate for the reverse deferred retirement option plan to comply with applicable federal laws or rules.

Added by Laws 2006, Ch. 241, § 4, repealed from and after June 30, 2011.

**38-886. Accidental disability retirement; total and permanent disability retirement; qualification; amount of pension; conditions for continued payment of pension**

- A. A member may retire and receive an accidental disability pension or a total and permanent disability pension if the local board finds that all of the following conditions occur:
  1. An application for disability retirement is filed with the retirement plan or the local board by either the member or the member's participating employer after the disabling incident or within one year after the date the member ceases to be an employee. Timely application for an accidental or a total and permanent disability pension is a prerequisite to receipt of the pension.
  2. The member undergoes all medical examinations and tests ordered by the local board and releases to the local board all medical reports and records requested by the local board.
  3. The local board determines that an accidental disability or total and permanent disability condition exists which meets the requirements for accidental disability retirement or total and permanent disability retirement.
- B. The effective date of an accidental disability retirement or a total and permanent disability retirement shall not predate the date of disability or the date the member ceases to be an employee.
- C. The amount of an accidental disability pension or a total and permanent disability pension is equal to fifty percent of the member's average monthly salary or the amount computed using the member's average monthly salary and the member's actual years of credited service, whichever is higher.
- D. During the period, if any, between the effective date of accidental disability retirement or total and permanent disability retirement and the date the disabled retired member attains sixty-two years of age the local board may require a disabled retired member to undergo periodic reevaluation of the continuation of accidental disability or total and permanent disability. If the disabled retired member refuses to submit to reevaluation, the local board may suspend payment of the pension. If the refusal continues for one year, the local board may revoke the disabled retired member's rights to the pension. An accidental disability pension or a total and permanent disabled pension

is terminated if the local board finds the retired member no longer meets the requirements for accidental disability retirement or total and permanent disability retirement.

- E. A member does not qualify for an accidental disability pension or a total and permanent disability pension if the local board determines that the member's disability results from any of the following:
1. An injury suffered while engaged in a felonious criminal act or enterprise.
  2. Service in the armed forces of the United States which entitles the member to a veteran's disability pension.
  3. A physical or mental condition or injury that existed or occurred before the member's date of membership in the plan.
- F. Local boards shall base a finding of total and permanent disability and accidental disability on medical evidence obtained by a medical doctor or clinic selected by the local board and shall disregard any other medical evidence or opinions. If the local board retains more than one medical doctor or clinic in connection with any case, the local board shall resolve any material conflicts in the medical evidence that is presented by the local board's medical doctors or clinics.

Added by Laws 1986, Ch. 325, § 1. Amended by Laws 1990, Ch. 272, § 4; Laws 1992, Ch. 315, § 3; Laws 1997, Ch. 239, § 23; Laws 2006, Ch. 264, § 15.

**38-886.01. Ordinary disability retirement for noncorrection staff; qualifications; amount of pension; conditions for continued payment of pension; definition**

- A. ~~Full time dispatchers who are employed by an employer of an eligible group as defined in Section 38-842.~~ A member may retire and receive an ordinary disability pension if the local board finds that all of the following conditions occur:
1. An application for disability retirement is filed with the retirement plan or the local board by either the member or the member's participating employer after the disabling incident or within one year after the date the member ceases to be an employee. Timely application for an ordinary disability pension is a prerequisite to receipt of the pension.
  2. The member undergoes all medical examinations and tests ordered by the local board and releases to the local board all medical reports and records requested by the local board.
  3. The local board determines that an ordinary disability condition exists that meets the requirements for an ordinary disability.
  4. The member is not participating in the reverse deferred retirement option plan pursuant to section 38-885.01.
- B. The effective date of an ordinary disability retirement shall not predate the date of disability or the date the member ceases to be an employee.
- C. Except for a full-time dispatcher, the amount of an ordinary disability pension is equal to a fraction times the member's normal retirement pension that is computed pursuant to section 38-885, subsection C as if the member had twenty years of credited service. The fraction is the result obtained by dividing the member's actual years of credited service, not to exceed twenty years of credited service, by twenty. For a full-time dispatcher, the amount of an ordinary disability pension is equal to a fraction times the member's normal retirement pension that is computed pursuant to section 38-885, subsection C as if the member had twenty-five years of credited service. The fraction is the result obtained by dividing the member's actual years of credited

service, not to exceed twenty-five years of credited service, by twenty-five.

- D. During the period, if any, between the effective date of ordinary disability retirement and the date the disabled retired member attains sixty-two years of age the local board may require a disabled retired member to undergo periodic reevaluation of the continuation of ordinary disability. If the disabled retired member refuses to submit to reevaluation, the local board may suspend payment of the pension. If the refusal continues for one year, the local board may revoke the disabled retired member's rights to the pension. An ordinary disability pension is terminated if the local board finds the retired member no longer meets the requirements for ordinary disability retirement.
- E. A member does not qualify for an ordinary disability pension if the local board determines that the member's disability results from any of the following:
  - 1. An injury suffered while engaged in a felonious criminal act or enterprise.
  - 2. Service in the armed forces of the United States that entitles the member to a veteran's disability pension.
  - 3. A physical or mental condition or injury that existed or occurred before the member's date of membership in the plan.
- F. Local boards shall base a finding of ordinary disability on medical evidence that is obtained by a medical doctor or clinic selected by the local board and shall disregard any other medical evidence or opinions. If the local board retains more than one medical doctor or clinic in connection with the application, the local board shall resolve any material conflicts presented in the medical evidence that is presented by the medical doctors or clinics.
- G. For the purposes of this section, "ordinary disability" means a physical condition that the local board determines will prevent an employee from totally and permanently performing a reasonable range of duties within the employee's department or a mental condition that the local board determines will prevent an employee from totally and permanently engaging in any substantial gainful activity.

41-191.09 Effective date; conditional enactment:

Section 38-886.01, Arizona Revised Statutes, as amended by this act, is effective from and after June 30 of the year that follows the June 30 actuarial valuation of the corrections officer retirement plan that determines that the ratio of the funding value of accrued assets to accrued liabilities of the fund is at least one hundred per cent. Notwithstanding this section, the earliest effective date of section 38-886.01, Arizona Revised Statutes, as amended by this act, shall be from and after June 30, 2010, but only if the June 30, 2009, actuarial valuation of the corrections officer retirement plan determines that the ratio of the funding value of accrued assets to accrued liabilities of the fund is at least one hundred per cent. The administrator of the corrections officer retirement plan shall notify in writing the director of the Arizona legislative council of the date on which the condition is met.

Added by Laws 2006, Ch. 301, § 1; Laws 2007, Ch. 261, § 5 and § 17.

**38-887. Pension to surviving spouse of deceased retired member**

- A. The surviving spouse of a deceased retired member is entitled to receive a pension for life if each of the following conditions is met:
  - 1. The retired member was married to the surviving spouse for at least two years at the time of death.
  - 2. The surviving spouse files with the retirement plan a written application for the survivor pension.

- B. The amount of pension paid a surviving spouse is equal to four-fifths of the amount of the retired member's pension at the time of death.

Added by Laws 1986, Ch. 325, § 1. Amended by Laws 1999, Ch. 50, § 7; Laws 2002, Ch. 335, § 9.

**38-888. Pension to the surviving spouse of a member who dies before retirement**

- A. The surviving spouse of a deceased active member is entitled to receive a pension for life if each of the following conditions is met:
  - 1. The member was married to the surviving spouse for at least two years at the time of death.
  - 2. The surviving spouse files a written application with the retirement plan for the survivor benefit.
- B. The amount of a surviving spouse's pension is forty per cent of the deceased member's average monthly salary.
- C. The surviving spouse of a deceased member who is killed in the line of duty or dies from injuries suffered in the line of duty is entitled to receive a monthly amount equal to the deceased member's average monthly benefit compensation. For the purposes of this subsection, "killed in the line of duty" means the decedent's death was the direct and proximate result of physical injuries incurred in the performance of the decedent's public safety duties and does not include suicide.

Added by Laws 1986, Ch. 325, § 1. Amended by Laws 1990, Ch. 272, § 5; Laws 1999, Ch. 50, § 8; Laws 2002, Ch. 335, § 10; Laws 2006, Ch. 264, § 16.

**38-889. Guaranteed minimum aggregate payout**

If all pension payments permanently terminate before an aggregate amount equal to the retired member's or deceased member's accumulated member contributions has been paid, the difference between the amount of accumulated member contributions and the aggregate amount of pension payments made shall be paid to the individual or individuals whom the member may have named on a form provided by and filed with the retirement plan. If no such named individual survives, the difference shall be paid to the legal representative of the last surviving individual who was being paid a pension or the last surviving named individual.

Added by Laws 1986, Ch. 325, § 1.

**38-890. Pensions: commencement and duration**

- A. A normal retirement pension, an accidental disability pension, a total and permanent disability pension or an ordinary disability pension commences on the first day of the calendar month next following the member's date of retirement. A survivor pension commences on the first day of the calendar month next following the month in which the death causing payment of the pension occurs.
- B. Termination of payment of a pension occurs at the end of the calendar month in which the event causing the termination occurred. The payment shall be made for the full month of termination.
- C. A change in the amount of a pension occurs on the first day of the calendar month next following the date of the event causing the change.

Added by Laws 1986, Ch. 325, § 1. Amended by Laws 1992, Ch. 315, § 3; Amended by Laws 2006, Ch. 301, § 2.

**38-891. Employer and member contributions**

- A. As determined by actuarial valuations reported to the employers and the local boards by the fund manager, each employer shall make level per cent of salary contributions sufficient under the actuarial valuations to meet both the normal cost plus the actuarially determined amount required to amortize the unfunded accrued liability over, beginning July 1, 2005, a rolling period of at least twenty and not more than thirty years that is established by the fund manager taking into account the recommendation of the plan's actuary, except that, beginning with fiscal year 2006-2007, except as otherwise provided, the employer contribution rate shall not be less than six percent of salary. For any employer whose actual contribution rate is less than six percent of salary for fiscal year 2006-2007 and each year thereafter, that employer's contribution rate shall be at least five percent and not more than the employer's actual contribution rate. An employer may pay a higher level percent of salary thereby reducing its unfunded past service liability. All contributions made by the employers and all state taxes allocated to the fund shall be irrevocable and shall be used to pay benefits under the plan or to pay expenses of the plan and fund. The minimum employer contribution that is paid and that is in excess of the normal cost plus the actuarially determined amount required to amortize the unfunded accrued liability as calculated pursuant to this subsection shall be used to reduce future employer contribution increases and shall not be used to pay for an increase in benefits that are otherwise payable to members. The fund manager shall separately account for these monies in the fund. Forfeitures arising because of severance of employment before a member becomes eligible for a pension or for any other reason shall be applied to reduce the cost to the employer, not to increase the benefits otherwise payable to members. After the close of any fiscal year, if the plan's actuary determines that the actuarial valuation of an employer's account contains excess valuation assets other than excess valuation assets that were in the employer's account as of fiscal year 2004-2005 and is more than one hundred percent funded, the fund manager shall account for fifty percent of the excess valuation assets in a stabilization reserve account. After the close of any fiscal year, if the plan's actuary determines that the actuarial valuation of an employer's account has a valuation asset deficiency and an unfunded actuarial accrued liability, the fund manager shall use any valuation assets in the stabilization reserve account for that employer, to the extent available, to limit the decline in that employer's funding ratio to not more than two percent.
- B. Each member shall contribute eight and one-half per cent of the member's salary to the retirement plan. Member contributions shall be made by payroll deduction. Continuation of employment by the member constitutes consent and agreement to the deduction of the applicable member contribution. Payment of the member's salary less the deducted contributions constitutes full and complete discharge and satisfaction of all claims and demands of the member relating to salary for services rendered during the period covered by the payment.
- C. Each participating employer shall cause the member contributions to be deducted from the salary of each member. The deducted member contributions shall be paid to the retirement plan within five working days and shall be credited to the member's individual account.
- D. During a period when an employee is on industrial leave and the employee elects to continue contributions during the period of industrial leave, the employer and employee shall make contributions based on the salary the employee would have received in the employee's job classification if the employee was in normal employment status.
- E. The local board of the state department of corrections or the local board of the department of juvenile corrections may specify a position within that department as a designated position if the position is filled by an employee who has at least five years of credited service under the plan, who is transferred to temporarily fill the position and who makes a written request to the local board to specify the position as a designated position within ninety days of being transferred. On the employee leaving the position, the position is no longer a designated position.
- F. The local board of the state department of corrections or the local board of the department of juvenile corrections may specify a designated position within the department as a non-designated

position if the position is filled by an employee who has at least five years of credited service under the Arizona state retirement system and who makes a written request to the local board to specify the position as a non-designated position within ninety days of accepting the position. On the employee leaving the position, the position reverts to a designated position.

- G. If the aggregate computed employer contribution rate that is calculated pursuant to subsection A is less than six per cent of salary, beginning on July 1 of the following fiscal year the member contribution rate prescribed in subsection B is permanently reduced by an amount that is equal to the difference between six per cent and the aggregate computed employer contribution rate. Notwithstanding this subsection, the member contribution rate shall not be less than 7.65 per cent of the member's salary.

Added by Laws 1986, Ch. 325, § 1. Amended by Laws 1989, Ch. 310, § 14; Laws 1990, Ch. 272, § 6; Laws 1991, Ch. 155, § 4, retroactively effective to July 1, 1991; Laws 1991, Ch. 210, § 14; Laws 1995, Ch. 205, § 10; Laws 1995, Ch. 178, § 26; Laws 1996, Ch. 282, § 2, retroactively effective to January 1, 1995; Laws 1997, Ch. 197, § 3; Laws 1997, Ch. 239, § 24; Laws 2000, Ch. 126, § 6; Laws 2004, Ch. 229, § 1; Laws 2005, Ch. 208, § 4; Laws 2006, Ch. 261, § 3, effective immediately.

**38-892. Internal revenue code § 414(h) pickup of member contributions**

Each participating employer shall pick up the contributions required of members on account of compensation paid after the effective date specified in the resolution of the fund manager activating the provisions of this section. The picked up contributions shall be treated as participating employer contributions for the purpose of tax treatment under the United States internal revenue code. The specified effective date shall not be before the date the retirement plan receives notification from the internal revenue service that pursuant to § 414(h) of the internal revenue code the member contributions picked up shall not be included in gross income for income tax purposes until the time that the picked up contributions are distributed by refund or pension payments. The participating employers shall pick up the member contributions from funds established and available in a retirement deduction account, which funds would otherwise have been designated as member contributions and paid to the retirement plan. Member contributions picked up pursuant to this section shall be treated for all other purposes, in the same manner and to the same extent, as member contributions made before the effective date.

Added by Laws 1986, Ch. 325, § 1.

**38-893. Local boards; powers and duties; rules; hearings; administrative review**

- A. The administration of the plan and the responsibility for making the provisions of the plan effective for each employer are vested in a local board. The state department of corrections, the department of juvenile corrections, each participating county sheriff's department, each participating city or town, each participating employer of full-time dispatches for eligible groups as defined in section 38-842, and the judiciary shall have a local board. Each local board is constituted as follows:
1. For the state departments, two members who are elected by secret ballot by members employed by that department in a designated position and two citizens who are appointed by the governor. The director of each state department shall appoint one member to the local board who is knowledgeable in personnel actions. Each state department local board shall elect a chairman.
  2. For each participating county, the chairman of the board of supervisors, or the chairman's designee who is approved by the board of supervisors, as chairman, two members who are elected by secret ballot by members employed by the participating county in a designated position and two citizens, one of whom shall be the head of the merit system if it exists for the group of members, who are appointed by the chairman of the board of supervisors with the approval of the board of supervisors.

3. For political subdivisions, the mayor or chief elected official or a designee of the mayor or chief elected official approved by the respective governing body as chairman, two members elected by secret ballot by members employed by the appropriate employer and two citizens, one of whom shall be the head of the merit system if it exists for the group of members, appointed by the mayor or chief elected official and with the approval of the city council or governing body of the employer.
  4. For the judiciary, two members who are elected by secret ballot by members who are employed as a probation, surveillance or juvenile detention officer, a designee of the chief justice of the Arizona supreme court and two citizens, one of whom shall be the head of a human resource department for the group of members, appointed by the chief justice.
- B. The appointments and elections of local board members shall take place with one elective and one appointive board member, as designated by the appointing authority, serving a term ending two years after the date of appointment or election and the other local board members serving a term ending four years after the date of appointment or election. Thereafter, every second year, and as a vacancy occurs, an office shall be filled for a term of four years in the same manner as provided in this section.
- C. Within ten days after the member's appointment or election, each member of a local board shall take an oath of office that, so far as it devolves on the member, the member shall diligently and honestly administer the affairs of the local board and shall not knowingly violate or willingly permit to be violated any of the provisions of law applicable to the plan.
- D. Except as limited by subsection E of this section, a local board shall:
1. Decide all questions of eligibility and service credits and determine the amount, manner and time of payment of any benefit under the plan.
  2. Make a determination as to the right of a claimant to a benefit and afford a claimant or the fund manager, or both, a right to a rehearing on the original determination.
  3. Request and receive from the employers and from members information as is necessary for the proper administration of the plan and action on claims for benefits and forward the information to the fund manager.
  4. Distribute, in the manner the local board determines to be appropriate, information explaining the plan that is received from the fund manager.
  5. Furnish the employer, the fund manager and the legislature on request, with annual reports with respect to the administration of the plan that are reasonable and appropriate.
  6. Appoint a medical board, which is composed of a designated physician or clinic other than the employer's regular employee or contractor. If required, the local board may employ other physicians to report on special cases. The examining physician or clinic shall report the results of examinations made to the local board, and the secretary of the local board shall preserve the report as a permanent record.
  7. Sue and be sued to effectuate the duties and responsibilities set forth in this article.
- E. A local board has no power to add to, subtract from, modify or waive any of the terms of the plan, change or add to any benefits provided by the plan or waive or fail to apply any requirement of eligibility for membership or benefits under the plan.
- F. A local board, from time to time, shall establish and adopt rules as it deems necessary or desirable for its administration. All rules and decisions of a local board shall be uniformly and consistently applied to all members in similar circumstances.

- G. An action by a majority vote of the members of a local board that is not inconsistent with the provisions of the plan is final, conclusive and binding on all persons affected by it, unless a timely application for a rehearing or appeal is filed as provided in this article.
- H. A claimant or the fund manager may apply for a rehearing before the local board within the time period prescribed in this subsection. A claimant or the fund manager shall file an application for rehearing in writing with a member of the local board or its secretary within sixty days after:
  - 1. The claimant receives notification of the local board's original action by certified mail, by attending the meeting at which the action is taken or by receiving benefits from the plan pursuant to the local board's original action, whichever occurs first.
  - 2. The fund manager receives notification of the local board's original action by certified mail or by receipt of written directions from the local board pursuant to its original action, whichever occurs first.
- I. A hearing before a local board on a matter remanded from the superior court is not subject to a rehearing before the local board.
- J. Decisions of local boards are subject to judicial review pursuant to title 12, chapter 7, article 6.
- K. When making a ruling, determination or calculation, the local board is entitled to rely on information furnished by the employer, the fund manager, independent legal counsel or the actuary for the plan.
- L. Each member of a local board is entitled to one vote. A majority of the appointed and elected members is necessary for a decision by the members of a local board at any meeting of the local board.
- M. The local board shall adopt bylaws as it deems necessary. The local board shall elect a secretary who may, but need not, be a member of the local board. The secretary of the local board shall keep a record and prepare minutes of all meetings, forward the minutes to the fund manager within forty-five days after each meeting and forward all necessary communications to the fund manager.
- N. The employer shall pay the fees of the medical board and of the local board's legal counsel and all other expenses of the local board necessary for the administration of the plan at rates and in amounts as the local board approves.
- O. The local board shall issue directions to the fund manager concerning all benefits that are to be paid from the employer's account pursuant to the provisions of the fund. The local board shall keep on file, in the manner it deems convenient and proper, all reports from the fund manager and the actuary.
- P. The local board and the individual members of the local board are indemnified from the assets of the fund against any liability arising by reason of any act, or failure to act, made in good faith pursuant to the provisions of the plan.

Added by Laws 1990, Ch. 272, § 8. Amended by Laws 1991, Ch. 155, § 5; Laws 1991, Ch. 210, § 15; Laws 1995, Ch. 178, § 27; Laws 2001, Ch. 309, § 3; Laws 2006, Ch. 308, § 3.

**38-894. Financial objective of the retirement plan; participating employer contributions**

- A. The financial objective of the retirement plan is to receive contributions each fiscal year which are sufficient to both:
  - 1. Fund the actuarial cost of benefits likely to be paid on account of credited service earned by members during the fiscal year.

2. Fund the unfunded actuarial cost of benefits likely to be paid on account of credited service earned by members before the fiscal year over a period of not more than forty years. Contribution requirements shall be determined by an annual actuarial valuation using a generally recognized level per cent of payroll actuarial cost method.
- B. The fund manager may require an employer which proposes to become a participating employer after the plan has been in operation for more than one year to make supplemental contributions based on the excess of the actuarial costs associated with the proposed participation over the actuarial costs of the plan indicated by the last annual actuarial valuation of the plan. The amount of supplemental contributions shall be determined by actuarial valuation. The fund manager may pay the cost of the actuarial valuation or may require the employer to pay the cost.
  - C. The fund manager shall certify to each participating employer the amount of annual contribution needed to meet the financial objective and the participating employer shall appropriate and cause the contribution to be paid to the retirement plan.
  - D. Payment of contributions shall be made in accordance with the schedule adopted by the fund manager. Payments not made in a timely manner are subject to an interest charge at rates established by the fund manager.

Added by Laws 1986, Ch. 325, § 1.

**38-895. Maximum annual pensions**

- A. The maximum annual pension, financed by other than accumulated member contributions, payable by the retirement plan shall not exceed the lesser of ninety thousand dollars or one hundred per cent of the member's average annual compensation for the highest three consecutive calendar years of compensation while an active member of the retirement plan.
- B. The limitations of subsection A are subject to the following conditions:
  1. The maximum annual pension applies to a single life pension which is the actuarial equivalent of the pension paid by the plan.
  2. If payment begins before the date the payee attains sixty-two years of age, the maximum annual pension is reduced to the actuarial equivalent of the annual maximum at sixty-two years of age. The actuarial equivalent maximum shall not be less than seventy-five thousand dollars if payment commences on or after the date the payee attains fifty-five years of age. If payment commences before the date the payee attains fifty-five years of age, the actuarial equivalent maximum shall be computed from seventy-five thousand dollars payable at fifty-five years of age.
  3. If payment commences after the date the payee attains sixty-five years of age, the ninety thousand dollar maximum shall be increased to the actuarial equivalent of ninety thousand dollars payable at sixty-five years of age.
  4. If the member has less than ten years of credited service, the applicable maximum shall be multiplied by a fraction of which the numerator is the member's credited service and the denominator is ten.
  5. The maximums of ninety thousand dollars and seventy-five thousand dollars shall be increased as permitted by law to reflect cost of living increases.
  6. Actuarial equivalents shall be computed using an interest rate of five per cent a year, compounded yearly, and the 1971 group annuity mortality table.

- C. Notwithstanding the provisions of subsection A, the pension payable by the plan may be reduced to the extent necessary, as determined by the plan, to prevent disqualification of the plan under § 415 of the internal revenue code which imposes additional limitations on the pension payable to members who also participate in other qualified pension, profit sharing, savings or stock bonus plans of this state. The plan shall advise affected members of any additional limitation of their pension required by this subsection.

Added by Laws 1986, Ch. 325, § 1.

**38-896. Taxation of pensions; exemption for contributions**

The participating employer contributions and the assets of the fund are exempt from state, county and municipal taxes. Member contributions made to the fund after December 31, 1974, and subsequently withdrawn from the fund as other than a pension and benefits and pensions received by a member from the fund after December 31, 1988, are subject to tax pursuant to title 43.

Added by Laws 1986, Ch. 325, § 1. Amended by Laws 1989, Ch. 312, § 10; Laws 1991, Ch. 155, § 6, retroactively effective to January 1, 1991.

**38-897. Assignments prohibited; liability of fund**

- A. The right of an individual to a pension, to a refund of accumulated member contributions, to the pension itself or to any other right accrued or accruing to any individual, and the monies and assets of the retirement plan, are not subject to execution, garnishment, attachment, the operation of bankruptcy or insolvency law or other process of law except a qualified domestic relations order and are unassignable except as may be otherwise specifically provided.
- B. Any attempt to anticipate, alienate, sell, transfer, assign, pledge, encumber, charge or otherwise dispose of any right provided in subsection A is void. The fund is not liable in any manner for or subject to the debts, contracts, liabilities, engagements or torts of any person entitled to these rights.
- C. This section does not exempt employee benefits of any kind from a writ of attachment, a writ of execution, a writ of garnishment and orders of assignment issued by a court of record as the result of a judgment for arrearages of child support or for child support debt.
- D. A person who defrauds the system or who takes, converts, steals or embezzles monies owned by or from the system and who fails or refuses to return the monies to the system on the fund manager's written request is subject to civil suit by the system in the superior court of Maricopa county. On entry of an order finding the person has defrauded the system or taken, converted, stolen or embezzled monies owned by or from the system, the court shall enter an order against that person and for the system awarding the system all of its costs and expenses of any kind, including attorney fees, that were necessary to successfully prosecute the action. The court shall also grant the system a judicial lien on all of the nonexempt property of the person against whom judgment is entered pursuant to this subsection in an amount equal to all amounts awarded to the system, plus interest at the rate prescribed by section 44-1201, subsection A, until all amounts owed are paid to the system.
- E. Notwithstanding any other provision of this article, the fund manager may offset against any benefits otherwise payable by the system to an active or retired member or survivor any court ordered amounts awarded to the fund manager and system and assessed against the member or survivor.

Added by Laws 1986, Ch. 325, § 1. Amended by Laws 1994, Ch. 356, § 30; Laws 2006, Ch. 264, § 17.

**38-898. Subrogation; right of setoff**

- A. If an individual becomes entitled to a pension or other benefit payable by the retirement plan as a result of an accident or injury caused by the act of a third party, the fund is subrogated to the rights of the individual against the third party to the extent of fund financed benefits which the retirement plan pays or becomes liable for payment.
- B. The retirement plan is entitled to the right of setoff to recover overpayments made by the retirement plan and to satisfy any claim arising from embezzlement or fraud committed by a member, retired member, former member, beneficiary or other individual having a claim to benefits.

Added by Laws 1986, Ch. 325, § 1.

**38-899. Correction of errors**

The retirement plan shall correct errors in the records of the retirement plan. The retirement plan shall seek to recover overpayments and shall make up underpayments. Recovery of overpayments may be accomplished by reducing the amount of future payments so that the actuarial present value of actual payments to the recipient is equal to the actuarial present value of the payments to which the recipient was correctly entitled.

Added by Laws 1986, Ch. 325, § 1.

**39-900. Internal revenue code qualification**

The legislature intends that the retirement plan is a qualified pension plan under section 401 of the internal revenue code, as amended, or successor provisions of law, and that the trust is exempt from taxation under section 501 of the internal revenue code as amended. The assets of the fund are held in trust for the exclusive benefit of the members and beneficiaries of the retirement plan. The fund manager may adopt such additional provisions to the retirement plan as are necessary to fulfill this intent.

Added by Laws 1986, Ch. 325, § 1. Amended by Laws 2000, Ch. 126, § 7.

**38-900.01. Statutory construction**

- A. Because the plan as enacted at a particular time is a unique amalgam of rights and obligations having a critical impact on the actuarial integrity of the plan, the legislature intends that the plan as enacted at a particular time be construed and applied as a coherent whole and without reference to any other provision of the plan in effect at a different time.
- B. The plan was established in order to provide a uniform, consistent and equitable statewide program for those eligible corrections officers as defined by the plan. A member of the plan does not have a vested right to benefits under the plan until the member files an application for benefits and is found eligible for those benefits. An eligible claimant's right to benefits vests on the date of the member's application for those benefits or the member's last day of employment under the plan, whichever occurs first.

Added by Laws 2000, Ch. 126, § 8, retroactively effective to from and after June 30, 1986.

**38-901. Transfers into or out of retirement plan**

- A. A member who changes employment or transfers or is assigned to a position in which the member is no longer eligible to be a member of this plan, because of a change in duties or otherwise, with the same or another employer of this state or a municipality of this state participating in a different retirement system or plan, is entitled to have all credited service transferred to the retirement system or plan applicable to the new position in accordance with article 7 of this chapter.

- B. A member who begins employment with a participating employer in this plan and who has credited service from a different system or plan may transfer the prior service to this plan in accordance with article 7 of this chapter.

Added by Laws 1986, Ch. 325, § 1. Amended by Laws 1989, Ch. 310, § 15; Laws 2006, Ch. 264, § 18.

**38-902. Joinder agreement**

- A. County detention officers and non-uniformed employees of a sheriff's department whose primary duties require direct contact with inmates may participate in this plan if the board of supervisors of the county enters into a joinder agreement with the fund manager to bring such employees into this plan. The joinder agreement shall be in accordance with the provisions of this plan. All such employees shall be designated for membership in the joinder agreement unless written consent to the contrary is obtained from the fund manager.
- B. City or town detention officers may participate in this plan if the governing body of the city or town enters into a joinder agreement with the fund manager to bring its detention officers into this plan. The joinder agreement shall be in accordance with the provisions of the plan. The governing body of the city or town shall designate all detention officers for membership in the plan unless written consent to the contrary is obtained from the fund manager.
- C. Full-time dispatchers may participate in this plan if the governing body or agency of the employer of an eligible group as defined in section 38-842 enters into a joinder agreement with the fund manager to bring its full-time dispatchers into this plan. The joinder agreement shall be in accordance with the provisions of this plan. The governing body or agency of the employer shall designate all full-time dispatchers for membership in the plan except for a full-time dispatcher who signs an irrevocable agreement before the joinder agreement becomes effective electing not to become a member of the plan. A full-time dispatcher employed by an employer who becomes eligible for membership in the plan pursuant to this section may elect to participate in the plan within the deadlines and pursuant to the terms prescribed for such participation by the fund manager.
- D. Probation, surveillance and juvenile detention officers may participate in this plan if the administrative office of the courts enters into a joinder agreement with the fund manager to bring its probation, surveillance and juvenile detention officers into this plan. The joinder agreement shall be in accordance with the provisions of this plan. The administrative office of the courts shall designate all probation, surveillance and juvenile detention officers for membership in this plan unless written consent to the contrary is obtained from the fund manager.
- E. The new employer shall designate the groups of employees who are eligible to participate in the plan and shall agree to make contributions each year that are sufficient to meet both the normal cost of a level cost method attributable to inclusion of its employees and the prescribed interest on the past service cost for its employees.
- F. Before the execution of any joinder agreement each employer contemplating participation in the plan shall have an actuarial valuation made, which is payable by the employer, to determine the estimated cost of participation in accordance with section 38-894.
- G. Assets under any existing public employee defined benefit retirement program, except a military retirement program, that are necessary to equal the actuarial present value of projected benefits to the extent funded on a market value basis as of the most recent actuarial valuation attributable to the employer's designated employee group, calculated using the actuarial methods and assumptions adopted by the existing public employee retirement program, shall be transferred from the program to this fund no later than sixty days after the employer's effective date. That portion of the transferred assets that is attributable to employee contributions, including interest credits, shall be properly allocated to each affected employee of the employer and credited to the

employee's initial accumulated contributions in accordance with a schedule furnished by the employer to the fund manager.

**Sec. 5. Joinder agreement, transfer of all credited service to corrections officer retirement plan; election to remain in existing retirement system**

Notwithstanding any other law, if the administrative office of the courts enters into a joinder agreement with the fund manager to bring its probation, surveillance and juvenile detention officers into the corrections officer retirement plan, all credited service from any other Arizona defined benefit state retirement system or plan shall be transferred to the corrections officer retirement plan unless the probation, surveillance or juvenile detention officer makes an irrevocable election to remain in the employee's existing state retirement system or plan.

**Sec. 6. Conditional enactment**

Section 38-881, Arizona Revised Statutes, as amended by Laws 2005, Chapter 324, Section 1 and 2 of this Act, becomes effective on the date prescribed in Laws 2005, Chapter 324, Section 2 but only on the occurrence of the condition prescribed by Laws 2005, Chapter 324, Section 2.

Added by Laws 1986, Ch. 325, § 1. Amended by Laws 1987, Ch. 133, § 1; Laws 1991, Ch. 155, § 7; Laws 1997, Ch. 239, § 25; Laws 2001, Ch. 280 § 7; Laws 2001, Ch. 309, § 4; Laws 2001, Ch. 380, § 13; Laws 2006, Ch. 301, § 3; Laws 2006, Ch. 308, § 3; Laws 2006, Ch. 264, § 19.

**38-903. Reservation to the legislature**

The right to modify, amend or repeal this article or any provision thereof is reserved to the legislature.

Added by Laws 1986, Ch. 325, § 1.

**38-904. Death benefits; amount**

A. If an active or inactive member dies and no pension is payable on account of the member's death, an amount equal to two times the member's accumulated contributions to the retirement plan is payable to the person designated by the deceased member in writing and filed with the fund manager. If the designated person or persons do not survive the deceased member, the payment is payable to the estate of the deceased member. For the purposes of this subsection, "inactive member" means a person who previously made contributions to the plan, who has not retired, who is not currently making contributions to the plan and who has not withdrawn contributions from the plan.

B. If the deceased retired or active member does not have an eligible surviving spouse or the pension of the eligible surviving spouse is terminated, each surviving unmarried child of the deceased retired or active member is entitled to a pension which terminates on adoption or the attainment of eighteen years of age unless the child is a full-time student under twenty-three years of age or the child is under a disability which began before the child attained the age of twenty-three years. The amount of the pension of each surviving child of a deceased retired or active member is an equal share of the amount of the surviving spouse's pension. The fund manager shall pay the surviving minor child's pension to the person who is the legally appointed guardian or custodian of the eligible child.

Added by Laws 1990, Ch. 272, § 9. Amended by Laws 1995, Ch. 205, § 1; Laws 1997, Ch. 239, § 26; Laws 1999, Ch. 50, § 9.

**38-905. Benefit increases**

A. Effective July 1 of each year, each retired member or survivor of a retired member is entitled to receive a permanent benefit increase in the base benefit equal to the amount determined pursuant to this section if either:

1. The retired member or survivor of the retired member was receiving benefits on or before July 31 of the previous two years.
  2. The retired member or survivor of the retired member was fifty-five years of age or older on July 1 of the current year and was receiving benefits on or before July 31 of the previous year.
- B. The monthly amount of a permanent increase provided by subsection A is determined as follows:
1. Determine the excess investment earnings on the net assets of the fund.
  2. Determine the excess investment earnings account balance.
  3. Determine the actuarial present value, as of June 30 of the preceding calendar year, of a five dollar per month increase in the amount of each pension eligible for an increase.
  4. Add the amounts determined in paragraphs 1 and 2 of this subsection and divide that sum by the amount determined in paragraph 3 of this subsection.
  5. From the quotient obtained in paragraph 4 of this subsection, drop any fraction.
  6. Multiply the number obtained in paragraph 5 of this subsection by five dollars.
- C. The excess investment earnings on the net assets of the fund are equal to the total assets of the fund less any amount allocated to the excess investment earnings account multiplied by one-half of the positive difference, if any, between the total return of the plan and nine per cent. The excess investment earnings on the net assets of the fund are zero if the total return of the plan is less than or equal to nine per cent.
- D. As used in this section, total return and net assets of the fund are the amounts published in the annual report of the plan for the fiscal year ending June 30 of the calendar year preceding the July 1 of the increase.
- E. All excess investment earnings on the net assets of the fund are available for benefit increases as provided in this section. Any excess investment earnings on the net assets of the fund from any year which are not used for benefit adjustments for that year are available for future benefit increases in the following years. Earnings on the excess investment earnings account balance at the rate of the total return as published in the annual report of the plan shall be added each year to the excess investment earnings account and shall be available for future benefit increases.
- F. The maximum benefit increase under this section is limited to four per cent of the benefit being received on the preceding June 30.

Added by Laws 1990, Ch. 272, § 9. Amended by Laws 1994, Ch. 356, § 31; Laws 1998, Ch. 190, § 1; Laws 1998, Ch. 264, § 3; Laws 1999, Ch. 50, § 10, retroactively effective to July 1, 1999; Laws 2001, Ch. 203, §1.

**38-905.01. Lump sum payment of benefit increases**

Notwithstanding any provision of this article, the fund manager, at the request of a retired member, a survivor or the retired member's or survivor's guardian or conservator, may pay any increase in retirement benefits pursuant to this article in a lump sum payment based on the actuarial present value of the increase in the retirement benefits if the payment of the increase in retirement benefits would result in ineligibility for, reduction of or elimination of social service programs provided to the retired member or survivor by this state, a political subdivision of this state or the federal government.

Added by Laws 1992, Ch. 43, § 3, effective April 27, 1992.

**38-906. Group health and accident coverage for retired members; payment; definition**

- A. The fund manager shall pay from the assets of the fund part of the single coverage premium of any group health and accident insurance for each retired member or survivor of the plan who receives a pension and who has elected to participate in coverage provided by § 38-651.01 or 38-782 or any other health and accident insurance coverage provided or administered by a participating employer in the plan. The fund manager shall pay up to:
1. One hundred fifty dollars per month for each retired member or survivor of the plan who is not eligible for medicare.
  2. One hundred dollars per month for each retired member or survivor of the plan who is eligible for medicare.
- B. The fund manager shall pay from the assets of the fund part of the family coverage premium of any group health and accident insurance for each retired member or survivor of the plan who elects family coverage and who otherwise qualifies for payment pursuant to subsection A of this section. Payment under this subsection is in the following amounts:
1. Up to two hundred sixty dollars per month if the retired member or survivor of the plan and one or more dependents are not eligible for medicare.
  2. Up to one hundred seventy dollars per month if the retired member or survivor of the plan and one or more dependents are eligible for medicare.
  3. Up to two hundred fifteen dollars if either:
    - (a) the retired member or survivor of the plan is not eligible for medicare and one or more dependents are eligible for medicare.
    - (b) the retired member or survivor of the plan is eligible for medicare and one or more dependents are not eligible for medicare.
- C. The fund manager shall not pay more than the amount prescribed in this section for a benefit recipient as a member or survivor of the plan.
- D. In addition to the payments provided by subsection A of this section, through June 30, 2005, the fund manager shall pay an insurance premium benefit for medical coverage, not including limited benefit coverage as defined in section 20-1137, for each retired member or survivor of the plan who is entitled to a premium benefit payment pursuant to subsection A of this section and who lives in a nonservice area as follows:
1. Up to three hundred dollars per month for a retired member or survivor of the plan who is not eligible for medicare. To qualify for this additional benefit, a retired member or survivor shall pay out-of-pocket medical insurance premiums of at least one hundred twenty-five dollars per month.
  2. Up to one hundred seventy dollars per month for a retired member or survivor of the plan who is eligible for medicare. To qualify for this additional benefit, a retired member or survivor shall pay out-of-pocket medical insurance premiums of at least one hundred dollars per month.
- E. In addition to the payments provided by subsection B of this section, through June 30, 2005, the fund manager shall pay an insurance premium benefit for medical coverage, not including limited benefit coverage as defined in section 20-1137, for a retired member or survivor of the plan who is entitled to a premium benefit payment pursuant to subsection B of this section, who is enrolled in a family medical plan and who lives in a nonservice area as follows:

1. Up to six hundred dollars per month if the retired member or survivor of the plan and one or more dependents are not eligible for medicare. To qualify for this additional benefit, a retired member or survivor shall pay out-of-pocket medical insurance premiums of at least four hundred twenty-five dollar per month.
  2. Up to three hundred fifty dollars per month if the retired member or survivor of the plan and one or more dependents are eligible for medicare. To qualify for this additional benefit, a retired member or survivor shall pay out-of-pocket medical insurance premiums of at least two hundred dollars per month.
  3. Up to four hundred seventy dollars per month if either:
    - (a) The retired member or survivor of the plan is not eligible for medicare and one or more dependents are eligible for medicare.
    - (b) The retired member or survivor of the plan is eligible for medicare and one or more dependents are not eligible for medicare. To qualify for this additional benefit, a retired member or survivor shall pay out-of-pocket medical insurance premiums of at least four hundred dollars per month.
- F. In addition to the payments provided by subsection A of this section, beginning July 1, 2005, through June 30, 2009, the fund manager shall pay an insurance premium benefit for medical coverage, not including limited benefit coverage as defined in section 20-1137, for each medicare eligible retired member or survivor of the plan who is entitled to a premium benefit payment pursuant to subsection A of this section and who lives in a nonservice area of up to one hundred seventy dollars per month for a retired member or survivor of the plan who is eligible for medicare. To qualify for this additional benefit, a retired member or survivor shall pay out-of-pocket medical insurance premiums of at least one hundred dollars per month.
- G. In addition to the payments provided by subsection B of this section, beginning July 1, 2005, through June 30, 2009, the fund manager shall pay an insurance premium benefit for medical coverage, not including limited benefit coverage as defined in section 20-1137, for a medicare eligible retired member or survivor of the plan who is entitled to a premium benefit payment pursuant to subsection B of this section, who is enrolled in a family medical plan and who lives in a nonservice area as follows:
1. Up to three hundred fifty dollars per month if the retired member or survivor of the plan and one or more dependents are eligible for medicare. To qualify for this additional benefit, a retired member or survivor shall pay out-of-pocket medical insurance premiums of at least two hundred dollars per month.
  2. Up to four hundred seventy dollars per month if the retired member or survivor of the plan is eligible for medicare and one or more dependents are not eligible for medicare. To qualify for this additional benefit, a retired member or survivor shall pay our-of-pocket medical insurance premiums of at least four hundred dollars per month.
- H. A retired member or survivor of the plan who is enrolled in a managed care program in a nonservice area is not eligible for the payment prescribed in subsection D, E, F or G of this Section. ~~if the member terminates coverage under the managed care program.~~
- I. A retired member or survivor of the plan may elect to purchase individual health care coverage and receive a payment pursuant to this section through the retired member's employer if that employer assumes the administrative functions associated with the payment, including verification that the payment is used to pay for health insurance coverage if the payment is made to the retired member or survivor of the plan.

- J. For the purposes of this section, "nonservice area" means an area in this state in which the Arizona state retirement system pursuant to section 38-782, the department of administration pursuant to section 38-651.01 or the member's or survivor's participating employer does not provide or administer a health care services organization program, excluding any preferred provider organization program or individual health indemnity policy, for which the retired member or survivor of the plan is eligible.

Added by Laws 1990, Ch. 272, § 9. Amended by Laws 1994, Ch. 356, § 32; Laws 1997, Ch. 239, § 27; Laws 2001, Ch. 376, § 4; Laws 2001, Ch. 383, § 4; Laws 2003, Ch. 247, § 4; Laws 2005, Ch. 297, § 4; Laws 2007, Ch. 253, § 6 effective immediately.

**38-907. Credited service for military service; national guard or reserve members; payment of contributions during active military service**

- A. A member of the plan may receive credited service for active military service if:
1. The member was honorably separated from the military service.
  2. The period of military service for which the member receives credited service does not exceed forty-eight months.
  3. The period of military service for which the member receives credited service is not on account with any other retirement system.
- B. Except as provided in subsection C, the cost to the member to purchase military credited service pursuant to this section is the amount necessary to equal the increase in the actuarial present value of projected benefits resulting from the credit.
- C. For a period of time of active military service but for not more than forty-eight months an employer shall make employer contributions and member contributions for a person who was an active member of the plan on the day before he began active military service, who satisfies the requirements of subsection A, paragraph 3 and who meets the following requirements:
1. Is a member of the Arizona national guard or is a member of the reserves of any military establishment of the United States.
  2. Volunteers or is ordered into active military service of the United States as part of a presidential call-up.
  3. Is honorably separated from active military service and returns to employment for the same employer from which he left for active military service within ninety days after the date active military service is terminated or is hospitalized as a result of military service and returns to employment for the same employer from which he left for active military service within ninety days after release from service related hospitalization or dies as a result of the military service.
- D. Contributions made pursuant to subsection C shall be for the period of time beginning on the date the member began active military service and ending on one of the following dates:
1. The date the member is separated from active military service.
  2. The date the member is released from service related hospitalization or one year after initiation of service related hospitalization, whichever date is earlier.
  3. The date the member dies as a result of active military service.
- E. Notwithstanding any other law, on payment of the contributions made pursuant to subsection C, the member shall be credited with service for retirement purposes for the period of time of active military service of not more than forty-eight months.

- F. The employer shall make contributions pursuant to subsection C based on the salary being received by the member immediately before the member volunteered or was ordered into active military service in a lump sum and without penalty when the member returns to employment or on receipt of the member's death certificate. If a member suffers a service related death, the employer shall make the employer and member contributions up to and including the date of the employee member's death. Death benefits shall be calculated as prescribed by law.
- G. Service credits for active military service shall not be applied to the member's account until such time as complete payment as determined in either subsection B or C is made to the retirement plan.
- H. A member shall submit a copy of the military discharge certificate (DD-256A) and a copy of the military service record (DD-214) or its equivalent with his application when applying for credited service for active military service, except that members of the Arizona national guard and military reserves ordered into active military service as part of a presidential call-up are only required to submit a copy of the military service record (DD-214) or its equivalent.
  - 1. Notwithstanding any other law, the member is not required to reimburse his employer or the plan for any contribution made pursuant to subsection C.

Added by Laws 1990, Ch. 272, § 9. Amended by Laws 1994, Ch. 207, § 8.

**38-908. Transfer of credited service**

- A. A member who terminates employment with an employer and accepts a position with the same or another employer participating in the plan shall have the member's credited service transferred to the member's record with the new employer provided the member leaves the member's accumulated contributions on deposit with the fund. The period not employed shall not be considered as service or credited service.
- B. The new employer's account shall be credited with the member's accumulated contributions plus the additional amount, if any, necessary to equal the increase in the actuarial present value to the extent funded on a market value basis as of the most recent actuarial valuation of projected benefits resulting from the transfer calculated by the system's actuary using the actuarial methods and assumptions adopted by the fund manager.

Added by Laws 1994, Ch. 356, § 33. Amended by Laws 1995, Ch. 205, § 12; Laws 1997, Ch. 239, § 28; Laws 2006, Ch. 264, § 20.

**38-909. Redemption of prior service; calculation**

- A. Each present active member of the plan who had previous service in this state as an employee with an employer now covered by the plan or who had previous service with an agency of the United States government, a state of the United States or a political subdivision of a state of the United States as a full-time paid corrections officer or full-time paid certified peace officer may elect to redeem any part of the prior service by paying into the plan any amounts required under subsection B if the prior service is not on account with any other retirement system.
- B. Any present active member who elects to redeem any part of the prior service for which the employee is deemed eligible by the fund manager under this section shall pay into the plan the amounts previously withdrawn by the member, if any, as a refund of the member's accumulated contributions plus accumulated interest as determined by the fund manager and the additional amount, if any, computed by the plan's actuary that is necessary to equal the increase in the actuarial present value of projected benefits resulting from the redemption calculated using the actuarial methods and assumptions prescribed by the plan's actuary.
- C. The discount rate used by the actuary for the redemption calculation pursuant to subsection B is an amount equal to the lesser of the assumed rate of return that is prescribed by the fund

manager or an amount equal to the yield on a ten year treasury note as of March 1 that is published by the federal reserve board plus two per cent. This discount rate is effective beginning in the next fiscal year and shall be recalculated each year.

Added by Laws 2004, Ch. 64, § 1.

**38-910. Domestic relations orders; procedures**

- A. Notwithstanding any other law, in a judicial proceeding for annulment, dissolution of marriage or legal separation that provides for the distribution of community property, or in any judicial proceeding to amend or enforce such a property distribution, a court in this state may issue a domestic relations order that provides that all or any part of a participant's benefit or refund in the plan that would otherwise be payable to that participant shall instead be paid by the plan to an alternate payee.
- B. A domestic relations order is not effective against the plan unless the domestic relations order is approved by the plan and qualifies as a plan approved domestic relations order. To qualify as a plan approved domestic relations order, a domestic relations order shall comply with any policies or procedures adopted pursuant to subsection K and shall also meet all of the following requirements:
1. The domestic relations order shall state the name and the last known mailing address of the participant and the name and last known mailing address of the alternate payee that is covered by the domestic relations order.
  2. The domestic relations order shall clearly state the amount or percentage of the participant's benefits that is payable by the plan to the alternate payee or the precise manner in which the amount or percentage is to be determined.
  3. The domestic relations order shall state the number of payments or periods to which the domestic relations order applies, if applicable.
  4. The domestic relations order shall state that the domestic relations order applies to the plan.
  5. The domestic relations order shall not require the plan to provide any type or form of benefit or any option not otherwise provided by this article.
  6. The domestic relations order shall not require the plan to provide increased benefits determined on the basis of actuarial value.
  7. The domestic relations order shall not require the payment of benefits to an alternate payee if the benefits are required to be paid to another alternate payee under a separate plan approved domestic relations order.
- C. On receipt by the plan of a certified copy of a domestic relations order and a written request for a determination that the domestic relations order is a plan approved domestic relations order, the plan shall promptly issue a written notice of receipt stating that the domestic relations order and request were received to the participant and alternate payee at the addresses on file, if any.
- D. The plan has a determination period to issue a written determination indicating whether a domestic relations order qualifies as a plan approved domestic relations order. If the participant is receiving benefits during the determination period, and if the plan can determine the amount of the benefits that currently would be payable to the alternate payee if the domestic relations order were a plan approved domestic relations order, the plan shall segregate the amount and shall pay the remaining portion of the benefits to the participant. If the plan determines the domestic

relations order is a plan approved domestic relations order, the plan shall pay the participant and alternate payee pursuant to the plan approved domestic relations order on the first day of the month following the month in which the determination was issued, or the first day of the month following the month in which a benefit is payable under the plan approved domestic relations order, whichever is later. If the plan determines the domestic relations order fails to qualify as a plan approved domestic relations order, the plan shall specify in its determination how the domestic relations order is deficient and how it may be amended to qualify as a plan approved domestic relations order. If the participant is currently receiving benefits, and if the plan can determine the amount of segregated funds that would be payable to the alternate payee if the domestic relations order were a plan approved domestic relations order, the plan shall hold the segregated funds during the cure period to allow the parties to submit a certified copy of an amended domestic relations order and a written request for a determination that the amended domestic relations order is a plan approved domestic relations order. During the cure period, the plan shall pay the participant's portion to the participant. At the end of the cure period, if the issue of whether an amended domestic relations order qualifies as a plan approved domestic relations order remains undetermined or if an amended domestic relations order is determined not to be a plan approved domestic relations order, the plan shall pay the segregated funds and the participant's portion to the participant. The participant shall hold the segregated funds in trust for the alternate payee as provided in subsection J. If an amended domestic relations order that is submitted after the expiration of the cure period is determined to be a plan approved domestic relations order, the plan shall make payments to an alternate payee under the plan approved domestic relations order only prospectively. A determination by the plan that a domestic relations order is not a plan approved domestic relations order does not prohibit a participant or alternate payee from submitting an amended domestic relations order to the plan.

- E. Each participant and alternate payee is responsible for maintaining a current mailing address on file with the plan. The plan has no duty to attempt to locate any participant or alternate payee. The plan has no duty to provide a notice of receipt or determination or pay benefits by means other than mailing the notice or payments to the participant or alternate payee at the last known address that is on file with the plan. If the address of an alternate payee is unknown to the plan, but benefits are payable to the alternate payee pursuant to a plan approved domestic relations order, the plan shall either:
  - 1. Hold the alternate payee's portion until such a time as the alternate payee provides the plan with a current address.
  - 2. Pay the alternate payee's portion to the participant, who shall hold the alternate payee's portion in trust as provided in subsection J, until such a time as the alternate payee is located. At that time the participant shall pay the alternate payee's portion directly to the alternate payee.
- F. Once the plan is notified of the alternate payee's current address, the plan shall prospectively pay the alternate payee's portion to the alternate payee. If the address of a participant is unknown to the plan, but benefits are payable to the participant pursuant to a plan approved domestic relations order, the plan shall hold the participant's portion until the participant provides the plan with a current address.
- G. If the alternate payee identified in a plan approved domestic relations order predeceases the participant and the plan approved domestic relations order does not otherwise provide for the disposition of the alternate payee's interest, the plan shall pay the alternate payee's portion to the personal representative of the deceased alternate payee pursuant to this subsection. The plan is not responsible for making benefit payments to a personal representative until the personal representative has:
  - 1. Persuaded the plan that the personal representative is authorized to receive payments designated for the deceased alternate payee.

2. Provided the plan with an address to which the payments should be sent. The personal representative is responsible for maintaining a current mailing address on file with the plan. The plan has no duty to attempt to locate any personal representative.
- H. If, within thirty days after the date the plan verifies an alternate payee's death, a personal representative does not make demand on the plan for the alternate payee's portion, the plan shall either:
1. Hold the alternate payee's portion until the time a personal representative makes a proper demand for payment of the alternate payee's portion.
  2. Remit the alternate payee's portion to the participant, who shall hold the amounts in trust for the estate of the alternate payee until the personal representative is identified. At that time the participant shall pay the alternate payee's portion paid by the plan to the participant to the personal representative.
- Thereafter, the plan shall prospectively pay the alternate payee's portion to the personal representative.
- I. Amounts held or paid pursuant to this section shall not accrue interest unless otherwise prescribed by this article.
- J. The plan is not liable to the participant, the alternate payee, any personal representative of the estate of an alternate payee or any other person for any amount paid, withheld or disbursed by the plan pursuant to this section. If one or more payments are made by the plan to a person not otherwise entitled to receive the payments, the recipient of the payment is designated a constructive trustee for the payment received and, together with the marital community, if any, is the sole party against whom an action may be brought to recover the payment.
- K. The plan may adopt policies and procedures that govern the implementation of this section.

Added by Laws 2007, Ch. § .

**38-921. Transfer of retirement service credits from one retirement system or plan to another retirement system or plan in this state**

- A. An active or inactive member of a state retirement system or plan, including the retirement system provided for in article 2 of this chapter, the elected officials' retirement plan provided for in article 3 of this chapter, the public safety personnel retirement system provided for in article 4 of this chapter or the corrections officer retirement plan provided for in article 6 of this chapter may transfer service credits from one system or plan to the member's current or former system or plan pursuant to section 38-922 if all of the following conditions are met:
1. The board or fund manager governing the retirement system or plan from which the service credits are being transferred mutually agrees with the board or fund manager governing the retirement system or plan to which the service credits are being transferred regarding the terms of the transfer.
  2. The transfer does not cause either the retirement system or plan to which the transfer is made or the retirement system or plan from which the transfer is made to incur any unfunded accrued liabilities as a result of the transfer.
  3. The member initiates the transfer by making written application to the governing board or fund manager of the retirement system or plan to which the member is contributing.
- B. For the purposes of this section:

1. "Active member" means a member who satisfies the eligibility criteria of the state retirement system or plan and who is currently making member contributions to or receiving credited service from the state retirement system or plan.
2. "Inactive member" means a member of the state retirement system or plan who previously made contributions to the state retirement system or plan and who satisfies each of the following:
  - (a) Has not retired.
  - (b) Is not eligible for active membership in the state retirement system or plan.
  - (c) Is not currently making contributions to the state retirement system or plan.
  - (d) Has not withdrawn contributions from the state retirement system or plan.

Added by Laws 1989, Ch.310, § 16. Renumbered as § 38-921. Amended by Laws 1995, Ch. 32, § 19; Laws 2001, Ch. 123 §1.

**38-922. Transfer or redemption of service credits**

- A. Service credits qualified in accordance with section 38-921 may be transferred or redeemed in accordance with this section.
- B. In the case of a member whose contributions remain on deposit with the prior retirement system or plan, the following shall be calculated:
  1. The prior system or plan shall calculate the amount equal to the actuarial present value of a member's projected benefits to the extent funded on a market value basis as of the most recent actuarial valuation under the prior system or plan as calculated by that system's or plan's actuary using the same actuarial method and assumptions used in calculating that system's or plan's funding requirements based on the transferring member's service credits at the time of transfer.
  2. The system or plan to which the member is transferring shall calculate the increase in the actuarial present value of the projected benefits provided as a result of the transfer of the member's service credits. This calculation shall be performed by that system's or plan's actuary using the same actuarial method and assumptions used in calculating that system's or plan's funding requirements based upon the transferring member's service credits at the time of transfer.
- C. In the event a member decides to transfer:
  1. If the amount calculated in subsection B, paragraph 2 is greater than the amount calculated in subsection B, paragraph 1:
    - (a) The prior system or plan shall transfer to the present system or plan the greater of the amount calculated in subsection B, paragraph 1 or the member's accumulated contribution account balance.
    - (b) If the amount transferred is less than the amount calculated under subsection B, paragraph 2, the transferring member shall elect either to pay the difference or to accept a reduced transfer of service credits. If the member elects to pay the difference, the amount paid shall be added to the member's accumulated contribution account balance. If the member elects to accept a reduced transfer of service credits, the amount of service credits transferred shall be equal to the amount of service credits used in making the calculation under subsection B, paragraph 1 multiplied by the ratio of the amount calculated under subsection B, paragraph 1 to the amount calculated under subsection B, paragraph 2.

2. If the amount calculated in subsection B, paragraph 2 is less than or equal to the amount calculated in subsection B, paragraph 1, the prior system or plan shall transfer to the present system or plan the greater of the amount calculated in subsection B, paragraph 2 or the member's accumulated contribution account balance.
- D. In the case of an applicant who has withdrawn his member contributions from another prior system or plan of this state, the applicant shall pay into the new system or plan to which he is transferring an amount equal to the increase in the actuarial present value of the projected benefits provided by the service credits being redeemed and this amount shall be included in the member's current accumulated contribution account balance. This calculation shall be performed by the actuary of the system or plan to which the service credits are being transferred using the same actuarial method and assumptions used in calculating that system's or plan's funding requirements.
- E. Service credits shall not be applied to the applicant's account until such time as complete payment is made to the retirement system or plan to which the applicant is transferring. On completion of the transfer provided for in this Article, the member's rights in the retirement system or plan from which the member is transferring are extinguished.

Added by Laws 1989, Ch. 310, § 16. Renumbered as § 38-922. Amended by Laws 1991, Ch. 270, § 10; Laws 2006, Ch. 264, § 21.

**38-923. Transfer of service credits between municipal retirement systems and special retirement plans; definitions**

- A. An active or inactive member of a retirement system or plan of a municipality of this state or the public safety personnel retirement system who becomes a member of one or the other of these retirement systems or plans may transfer service credits from the member's prior retirement system or plan to the member's current retirement system or plan pursuant to section 38-924 if all of the following conditions are met:
  1. The board or fund manager governing the retirement system or plan from which the service credits are being transferred mutually agrees with the board or fund manager governing the retirement system or plan to which the service credits are being transferred regarding the terms of the transfer.
  2. The transfer does not cause either the retirement system or plan to which the transfer is made or the retirement system or plan from which the transfer is made to incur any unfunded accrued liabilities as a result of the transfer.
  3. The member initiates the transfer by making written application to the governing board or fund manager of the retirement system or plan to which the member is contributing.
- B. An active or inactive member of a retirement system or plan of a municipality of this state or the corrections officer retirement plan who becomes a member of one or the other of these retirement systems or plans may transfer service credits from the member's prior retirement system or plan to the member's current retirement system or plan pursuant to Section 38-924 if all of the following conditions are met:
  1. The board or fund manager governing the retirement system or plan from which the service credits are being transferred mutually agrees with the board or fund manager governing the retirement system or plan to which the service credits are being transferred regarding the terms of the transfer.
  2. The transfer does not cause either the retirement system or plan to which the transfer is made or the retirement system or plan from which the transfer is made to incur any

unfunded accrued liabilities as a result of the transfer.

3. The member initiates the transfer by making written application to the governing board or fund manager of the retirement system or plan to which the member is contributing.

C. For the purposes of this section:

1. "Active member" means a member who satisfies the eligibility criteria of the retirement system or plan and who is currently making member contributions to or receiving credited service from the retirement system or plan.
2. "Inactive member" means a member of the retirement system or plan who previously made contributions to the retirement system or plan and who satisfies each of the following:
  - (a) has not retired.
  - (b) is not eligible for active membership in the retirement system or plan.
  - (c) is not currently making contributions to the retirement system or plan.
  - (d) has not withdrawn contributions from the retirement system or plan.
3. "Municipality" means a city in this state with a population of more than five hundred thousand persons.

Added Laws 2006, Ch. 264, § 22.

**38-924. Transfer of service credits**

- A. Service credits qualified pursuant to section 38-923 may be transferred pursuant to this section.
- B. In the case of a member whose contributions remain on deposit with the prior retirement system or plan, the following shall occur:
  1. The prior system or plan shall determine the amount of the member's accumulated contribution account balance under the prior system or plan plus accumulated interest as determined by the governing body of the system or plan.
  2. The system or plan to which the member is transferring shall calculate any increase in the actuarial present value of the projected benefits provided as a result of the transfer of the member's service credits. The actuary of the system or plan to which the service credits are being transferred shall perform this calculation using the actuarial method and assumptions recommended by the actuary and adopted by the governing body of the retirement system or plan.
- C. If a member decides to transfer:
  1. The prior system or plan shall transfer to the present system or plan the amount determined pursuant to subsection b, paragraph 1 of this section. if the amount calculated in subsection b, paragraph 2 of this section is greater than the amount determined in subsection b, paragraph 1 of this section, the transferring member shall either elect to pay the difference in order to receive all service credits earned under the prior system or plan or to accept a reduced transfer of service credits. if the member elects to pay the difference, the amount paid shall be added to the member's accumulated contribution account balance. if the member elects to accept a reduced transfer of service credits, the amount of service credits transferred shall be equal to the amount of service credits earned under the prior system or plan corresponding to the

amount determined under subsection b, paragraph 1 of this section multiplied by the ratio of the amount calculated under subsection b, paragraph 1 of this section to the amount calculated under subsection b, paragraph 2 of this section.

2. If the amount calculated in subsection b, paragraph 2 of this section is less than or equal to the amount determined in subsection b, paragraph 1 of this section, the current system or plan shall credit the member with service credits under the current system or plan equal to the service credit earned under the prior system or plan corresponding to the amount determined under subsection b, paragraph 1 of this section.
- D. The retirement system or plan shall not apply service credits to the applicant's account until such time as complete payment is made to the retirement system or plan to which the applicant is transferring. On completion of the transfer provided for in this article, the member's rights in the retirement system or plan from which the member is transferring are extinguished.

Added by Laws 2006, Ch. 264, § 22.

## **CORRECTIONS OFFICER RETIREMENT PLAN**

### **RELATED STATUTES**

**23-392. Overtime compensation for certain law enforcement or probation officer activities; option; definitions**

- A. Any person engaged in law enforcement activities shall be compensated for each hour worked in excess of forty hours in one work week at the option of such employer at the following rates:
1. One and one-half times the regular rate at which such person is employed or one and one-half hours of compensatory time off for each hour worked if by the person's job classification overtime compensation is mandated by federal law.
  2. If by the person's job classification federal law does not mandate overtime compensation, the person shall receive the regular rate of pay or compensatory leave on an hour for hour basis.
- B. Any person engaged in probation officer activities shall be compensated for each hour worked in excess of eighty hours in a two week work period at the option of such employer at the following rates:
1. One and one-half times the regular rate at which such person is employed or one and one-half hours of compensatory time off for each hour worked if by the person's job classification overtime compensation is mandated by federal law.
  2. If by the person's job classification federal law does not mandate overtime compensation, the person shall receive the regular rate of pay or compensatory leave on an hour for hour basis.
- C. Paid leave may be considered hours worked for the purpose of calculating overtime.
- D. The director of the department of public safety may establish alternate work periods, in accordance with federal law, for the purpose of determining overtime compensation for those employees of the air rescue section of the department of public safety.
- E. Notwithstanding subsection C of this section, an alternate work period established by the director of the department of public safety for the purpose of determining overtime compensation shall not exceed twenty-eight days or one hundred sixty hours.

F. For the purposes of this section:

1. "Person engaged in law enforcement activities":

(a) Means:

(i) A law enforcement officer as defined by section 38-1001.

(ii) A peace officer as defined by section 41-1701.

(iii) Any security personnel responsible for controlling or maintaining custody of inmates in correctional institutions maintained by this state or a county, city or town.

(b) Does not include any such person employed in a bona fide executive or administrative capacity as defined by the employer.

2. "Person engaged in probation officer activities":

(a) Means a probation officer or surveillance officer who is appointed pursuant to section 8-203, 12-251, or 12-259.

(b) Does not include any such person employed in a bona fide executive or administrative capacity as defined by the employer.

Amended by Laws 2006, Ch. 151, § 1, effectively immediately.

**38-446. Acts based on written opinions; immunity**

Notwithstanding any provision of law to the contrary, no public officer or employee is personally liable for acts done in his official capacity in good faith reliance on written opinions of the attorney general issued pursuant to section 41-193, or written opinions of a county attorney of the county, or written opinions of the city or town attorney of the city or town or written opinions of any authorized private attorney for any independent public retirement trust fund or system for which the officer or employee serves or is employed.

Amended by Laws 2006, Ch. 264, § 1.

**38-651.01. Group health and accident coverage for retired public employees and elected officials and their dependents**

A. The department of administration shall, by rule, adopt standards to establish group health and accident coverage for former employees who worked for the state of Arizona and who opt upon retirement to enroll or continue enrollment in the group health and accident coverage for active employees working for the state of Arizona, or disabled, and receiving either income from a retirement program of this state or long-term disability income benefits pursuant to section 38-651.03 or chapter 5, article 2.1 of this title and their dependents and to establish eligibility for retired or disabled state employees to participate in the coverage. The department of administration may adopt rules which provide that if a retired or disabled insured dies before an insured surviving dependent, the insured surviving dependent is entitled to extended coverage at group rates if the insured surviving dependent elects to continue in the coverage within six months of the retired or disabled insured's death and the insured surviving dependent agrees to pay the cost of the premium for group health and accident insurance. Upon notification of the retired or disabled insured's death, the department of administration shall immediately notify an insured surviving dependent of the provisions of this section. The department of administration may enter into agreements with disabled former state employees and their dependents who elect

to obtain the coverage provided by this section. The agreements may include provisions for the payment of amounts sufficient to pay for the premium and administrative expense of providing the coverage. The department of administration may adopt rules which provide that upon the death of a state employee who at the time of death was eligible for normal retirement pursuant to section 38-781.07 under the Arizona state retirement plan, the insured surviving spouse and eligible dependent children are entitled to continue coverage under group rates provided that the deceased insured state employee, spouse and dependent children were insured at the time of the employee's death. The insured surviving spouse shall be charged an amount sufficient to pay the full premium for the coverage.

- B. The department of administration may, by rule, adopt standards to establish group health and accident coverage for former elected officials of this state or its political subdivisions and their dependents and to establish eligibility for former elected officials to participate in the coverage. Qualifications for eligibility shall include that the former elected official has at least five years of credited service in the elected officials' retirement plan pursuant to chapter 5 of this title, had been covered under a group health or group health and accident plan while serving as an elected official and had been serving as an elected official on or after January 1, 1983. The department of administration may adopt rules which provide that upon the death of an elected official or insured former elected official, the insured surviving spouse is entitled to coverage at group rates provided that the deceased insured former elected official met or would have met the qualifications for eligibility pursuant to this subsection or that the deceased elected official would have met the qualifications for eligibility had the deceased not been in office at the time of death. Except as provided in subsection J of this section, the insured former elected official or the insured surviving spouse shall be charged amounts which are sufficient to pay for the premium and state administrative expense of providing the coverage. Notwithstanding subsection J of this section, the standards shall provide that all or any portion of the former state employees or former elected officials or their dependents shall be grouped with officers and employees of the state and its departments and agencies or their dependents as necessary to obtain health and accident coverage at favorable rates.
- C. The state retirement system board may enter into agreements with retired and disabled state employee members of the system and plan who elect to obtain the coverage provided pursuant to subsection A of this section. The agreements may include provision for the deduction from the retirement benefits of participants of a retirement program of this state who elect to obtain the coverage of amounts sufficient to pay for the premium not covered under retirement benefits and state administrative expense of providing the coverage.
- D. Retired state employee or disabled state employee members of the public safety personnel retirement system, the elected officials' retirement plan, the corrections officer retirement plan or the optional retirement programs authorized pursuant to section 15-1628 who opt upon retirement to enroll or continue enrollment in the group health and accident coverage for active employees working for the state of Arizona and their dependents and who are receiving benefits from the public safety personnel retirement system, the elected officials' retirement plan, the corrections officer retirement plan or the optional retirement programs authorized pursuant to section 15-1628 may participate in group health and accident coverage provided pursuant to this section. The department of administration shall adopt rules which are necessary for the implementation of this subsection.
- E. The fund manager of the public safety personnel retirement system may enter into agreements with retired state employee members and their dependents who elect to obtain the coverage provided pursuant to this section. The agreements may include provision for the deduction from

the retirement benefits of participants of a retirement program of this state who elect to obtain such coverage of amounts sufficient to pay for the premium not covered under retirement benefits and state administrative expense of providing the coverage.

- F. The fund manager of the public safety personnel retirement system may enter into agreements with retired judges and retired elected officials and their dependents who elect to obtain the coverage provided pursuant to this section. The agreements may include provision for the deduction from the retirement benefits of participants of a retirement program of this state who elect to obtain the coverage of amounts sufficient to pay for the premium not covered under retirement benefits and state administrative expense of providing the coverage.
- G. The fund manager of the public safety personnel retirement system may contract with an insurance carrier and adopt standards to establish a group health and accident insurance coverage program for retired members of the public safety personnel retirement system, their dependents and their spouses. Any members or spouses who elect to obtain the group health and accident coverage provided under this subsection shall agree to a deduction from their monthly retirement benefits of an amount sufficient to pay for the premium not covered under retirement benefits and administrative expense of providing the coverage.
- H. A county board of supervisors may enter into agreements to establish group health and accident coverage for retired or disabled county employees and their dependents who elect to obtain the coverage provided pursuant to section 11-263, subsection B. The agreements may include provision for the deduction from the retirement benefits of participants of a retirement program of this state who elect to obtain the coverage of amounts sufficient to pay for the premium not covered under retirement benefits and the administrative expense of providing for the coverage.
- I. Nonmedicare eligible retirees who live in this state, who enroll in a qualifying plan under this section and who reside outside the area of a qualifying health maintenance organization shall be offered the option to enroll with a qualified health maintenance organization offered through their provider under the same premiums as if they lived within the area boundaries of the qualified health maintenance organization provided that:
  - 1. All medical services are rendered and received at an office designated by the qualifying health maintenance organization or at a facility referred by the health maintenance organization.
  - 2. All nonemergency or nonurgent travel, ambulatory and other expenses from the residence area of the retiree to the designated office of the qualifying health maintenance organization or the facility referred by the health maintenance organization are the responsibility of and at the expense of the retiree.
  - 3. All emergency or urgent travel, ambulatory and other expenses from the residence area of the retiree to the designated office of the qualifying health maintenance organization or the facility referred by the health maintenance organization shall be paid pursuant to any agreement between the health maintenance organization and the retiree living outside the area of the qualifying health maintenance organization.
- J. Public funds shall not be expended to pay all or any part of the premium of the insurance pursuant to this section except for monies authorized to be paid for any insured from the retirement plan which the insured is receiving benefits.

Added by Laws 1976, Ch. 117, § 1. Amended by Laws 1977, Ch. 163, § 2, effective June 6, 1977; Laws 1979, Ch. 96, § 1; Laws 1980, Ch. 153, § 2; Laws 1981, Ch. 271, § 2, effective April 27, 1981; Laws

1983, Ch. 98, § 106; Laws 1983, Ch. 300, § 1; Laws 1984, Ch. 246, § 2; Laws 1986, Ch. 234, § 1, effective April 29, 1986; Laws 1987, Ch. 282, § 1, effective August 17, 1987; Laws 1988, Ch. 331, § 1; Laws 1989, Ch. 310, § 1; Laws 1990, Chapter 235, § 1; Laws 1994, Ch. 25, § 1; Laws 1994, Ch. 356, § 3; Laws 1995, Ch. 134, § 1, effective April 17, 1995; Laws 1997, Ch. 291, § 3, effective July 1, 1998; Laws 1999, Ch. 300, § 12.

**38-782. Group health and accident coverage for retired public employees and elected officials and their dependents**

- A. The board shall establish group health and accident coverage for eligible retired and disabled members and their dependents. Eligible retired and disabled members are those members who are receiving retirement benefits from ASRS or long-term disability benefits pursuant to section 38-651.03 or article 2.1 of this chapter and who elect not to obtain health and accident insurance through their former employer. If an insured retired or disabled member dies before the insured member's dependent beneficiary or an insured surviving dependent, the dependent beneficiary or insured surviving dependent is entitled to coverage at group rates if the dependent beneficiary or surviving dependent elects to continue in the coverage within six months of the insured member's death and the dependent beneficiary or surviving dependent agrees to pay the cost of the premium for group health and accident insurance. On notification of the insured member's death, the board shall immediately notify a dependent beneficiary of an insured surviving dependent of the provisions of this section.
- B. Retired members of the public safety personnel retirement system, the elected officials' retirement plan, the corrections officer retirement plan or the optional retirement programs authorized pursuant to sections 15-1451 and 15-1628 and their dependents who are receiving benefits from the public safety personnel retirement system, the elected officials' retirement plan, the corrections officer retirement plan or the optional retirement programs authorized pursuant to sections 15-1451 15-1628 and who are not covered by section 38-651.01 may participate in group health and accident coverage provided pursuant to this section. On the death of an insured member of the public safety personnel retirement system, the elected officials' retirement plan, the corrections officer retirement plan or the optional retirement programs authorized pursuant to sections 15-1451 and 15-1628, the insured surviving dependent is entitled to coverage at group rates. Except as provided in subsection H of this section, the surviving dependent shall be charged amounts that are sufficient to pay for the premium and administrative expense of providing the coverage.
- C. The board may enter into agreements with retired and disabled members of ASRS who elect to obtain the coverage provided pursuant to subsection A of this section. Those agreements may include provision for the deduction from the retirement benefits of the members who elect to obtain the coverage of amounts sufficient to pay for the premium not covered under retirement benefits and the administrative expense of providing the coverage.
- D. The fund manager of the public safety personnel retirement system may enter into agreements with retired members of the public safety personnel retirement system, the elected officials' retirement plan, the corrections officer retirement plan and their dependents who elect to obtain the coverage provided pursuant to this section. Those agreements may include provisions for the deduction of the retirement benefits of the members who elect to obtain the coverage of amounts sufficient to pay for the premium not covered under their retirement benefits and the administrative expense of providing the coverage.
- E. The board may enter into agreements with retired members of the optional retirement programs authorized pursuant to sections 15-1451 and 15-1628 and their dependents who elect to obtain

the coverage provided pursuant to this section. Those agreements may include provisions for the payment of amounts sufficient to pay for the premium and administrative expense of providing the coverage.

- F. If an insured member receiving long-term disability benefits pursuant to article 2.1 of this chapter becomes ineligible for the long-term disability benefits, the member and the covered dependents of the member may continue to participate in the group health and accident coverage provided pursuant to this section subject to the following conditions:
1. Participation in the coverage is limited to twelve months from the date the member ceases eligibility for benefits under article 2.1 of this chapter or the member commences employment, whichever occurs first.
  2. The member shall pay the full premium cost of the coverage selected, and the member is not eligible for benefits pursuant to section 38-783.
  3. If a member who participates in the coverage dies during the twelve month period provided by this subsection, covered dependents of the member may continue coverage after the death of the member through the end of the twelve month period. Covered dependents of the member who continue coverage pursuant to this paragraph shall pay the full premium cost of the coverage selected and are not eligible for benefits pursuant to section 38-783.
- G. Retired or disabled members who are not eligible for Medicare, who live in this state, who enroll in a qualifying health maintenance organization under this section and who reside outside the area of a qualifying health maintenance organization shall be offered the option of enrolling with a qualified health maintenance organization offered through their provider under the same premiums as if they lived within the area boundaries of the qualified health maintenance organization provided that:
1. All medical services are rendered and received at an office designated by the qualifying health maintenance organization or at a facility referred by the health maintenance organization.
  2. All nonemergency or nonurgent travel, ambulatory and other expenses from the residence area of the member to the designated office of the qualifying health maintenance organization or the facility referred by the health maintenance organization are the responsibility of and at the expense of the member.
  3. All emergency or urgent travel, ambulatory and other expenses from the residence area of the member to the designated office of the qualifying health maintenance organization or the facility referred by the health maintenance organization shall be paid pursuant to any agreement between the health maintenance organization and the member living outside the area of the qualifying health maintenance organization.
- H. Public monies shall not be spent to pay all or any part of the insurance premium pursuant to this section except for monies authorized to be paid for any insured from the retirement plan from which the insured is receiving benefits.

Added by Laws 1995, Ch. 32, § 14, effective, March 30, 1995. Amended by Laws 1995, Ch. 134, § 13; Laws 1997, Ch. 291, § 4, effective July 1, 1998; Laws 1998, Ch. 236, § 3; Laws 1999, Ch. 300, § 15; Laws 2001, Ch. 136, § 18.

## **Article 8. Supplemental Defined Contribution Plans**

**38-951. Definitions**

In this article, unless the context otherwise requires:

1. "Board" means the Arizona state retirement system board established by section 38-713.
2. "Eligible group" means any of the following:
  - (1) The Arizona state retirement system established by article 2 of this chapter.
  - (2) The elected officials' retirement plan established by article 3 of this chapter.
  - (3) The public safety personnel retirement system established by article 4 of this chapter.
  - (4) The corrections officer retirement plan established by article 6 of this chapter.
  - (5) An optional retirement program established pursuant to section 15-1451 or 15-1628.
3. "Employer" means an agency or department of this state or an agency or department of a political subdivision of this state that has employees in an eligible group.
4. "Fund manager" means the fund manager established by section 38-848.
5. "Plan" means a supplemental defined contribution plan authorized by this article.

Added by Laws 2001, Ch. 280 § 9 and Ch. 380, § 15.

**38-952. Supplemental defined contribution plans establishment administration**

- A. The board, employer or fund manager of an eligible group may establish, administer, manage and operate a supplemental defined contribution plan. The fund manager may establish a single supplemental defined contribution plan for all contributing members of the retirement system and plans it administers.
- B. If a board, employer or fund manager establishes a supplemental defined contribution plan:
  1. The board may delegate authority to implement the plan to its director appointed pursuant to section 38-715.
  2. The employer may delegate authority to implement the plan to its internal benefits administrator or designee.
  3. The fund manager may delegate authority to implement the plan to the administrator employed pursuant to section 38-848, subsection K, paragraph 6.
  4. The board or fund manager may:
    - (a) Employ services it deems necessary, including legal services, for the operation and administration of the plan.
    - (b) Administer the plan through contracts with multiple vendors.
    - (c) Perform all acts, whether or not expressly authorized, that it deems necessary and proper for the operation and protection of the plan.
    - (d) For the purposes of this article, enter into intergovernmental agreements pursuant to title 11, chapter 7, article 3.
- C. A supplemental defined contribution plan shall be designed to be a qualified governmental plan under section 401(a) of the internal revenue code. The legislature intends that a supplemental

defined contribution plan is a qualified plan under section 401 of the internal revenue code, as amended, or successor provisions of law, and that a plan is exempt from taxation under section 501 of the internal revenue code. The board, employer or fund manager may adopt any additional provisions to a plan that are necessary to fulfill this intent.

- D. Although designated as employee contributions, all employee contributions made to a plan shall be picked up and paid by the employer in lieu of contributions by the employee. The contributions picked up by an employer may be made through a reduction in the employee's compensation or an offset against future compensation increases, or a combination of both. An employee participating in a plan does not have the option of choosing to receive the contributed amounts directly instead of the employer paying the amounts to the plan. It is intended that all employee contributions that are picked up by the employer as provided in this subsection shall be treated as employer contributions under section 414(h) of the internal revenue code, shall be excluded from employees' gross income for federal and state income tax purposes and are includable in the gross income of the employees or their beneficiaries only in the taxable year in which they are distributed. The specified effective date of the pick up pursuant to this subsection shall not be before the date the plan receives notification from the internal revenue service that all employee contributions that are picked up by the employer as provided in this subsection shall be treated as employer contributions pursuant to section 414(h) of the internal revenue code. Until notification is received, any employee contributions made under section 38-953 are made with after-tax contributions.

Added by Laws 2001, Ch. 280, § 9 and Ch. 380, § 15. Amended by Laws 2003, Ch. 250, § 1

**38-953. Supplemental option**

- A. A supplemental defined contribution plan is in addition to and does not replace an employee's existing state defined benefit retirement plan.
- B. Except as provided in subsection C, any contributing member of an eligible group that establishes a supplemental defined contribution plan as authorized by this article may participate in the supplemental defined contribution plan. Participation in any plan established by an eligible group authorizes the member's employer to make reductions or deductions in the member's compensation. The employer shall submit any reports required by the plan. Any compensation deferred under the plan shall be included as regular compensation or compensation for the purpose of computing the retirement and pension benefits earned by any employee participating in the plan.
- C. If the Arizona state retirement system establishes a supplemental defined contribution plan and an employer member of the Arizona state retirement system elects to participate in the supplemental defined contribution plan, any employee member of the employer who meets the eligibility requirements that are prescribed by the board for participation in the supplemental defined contribution plan and that are selected by the member's employer may participate in the supplemental defined contribution plan.
- D. An employee shall make an election to participate in a supplemental defined contribution plan within two years after the employee first meets the eligibility requirements to participate in the plan. An election to participate in a plan is irrevocable and continues for the remainder of the employee's employment with the employer.
- E. If an employee elects to participate in a plan pursuant to this section, the employee shall contribute a prescribed amount of the employee's gross compensation, which shall be a percentage of the employee's gross compensation, a fixed dollar amount, an amount prescribed in the Plan or some other definitive amount that may not be modified or revoked by the employee. As the Plan prescribes, an employer may annually increase or decrease the employee contributions in increments of one per cent up to the maximum allowed by law or the

employee may make a one-time irrevocable election of the employee's contribution amount. An employee is not required to contribute under this subsection in order to qualify for an employer match under subsection F or G. The employer match may accrue from any program established by the employer.

- F. An employer may elect to match the contributions made by the employee to the supplemental defined contribution plan at a rate determined by the employer. The employer shall pay this amount to the supplemental defined contribution plan in which the employee participates.
- G. An employer may elect to match the contributions made by the employee to any other program established by the employer under the internal revenue code, including any plan established under internal revenue code section 401(a), 403(b) or 457, at a rate determined by the employer. The employee shall determine whether the employer pays the matching contribution to the 401(a), 403(b), or 457 plan in which the employee participates, to the supplemental defined contribution plan in which the employee participates or to any other plan established by the employer.
- H. The rate of the employer match under subsection F or G shall be determined at the beginning of that employer's budget cycle and shall terminate at the end of that budget cycle. If an employer elects to match under subsection F or G, the employer shall make the contributions.

Added by Laws 2001, Ch. 280, § 9 Ch. 380, § 15. Amended by Laws 2003, Ch. 250, § 2; Laws 2007, Ch. 98, § 1.

**38-954.            Vesting**

- A. Employee contributions and earnings on employee contributions are immediately vested.
- B. Employer matching contributions, if any, and the earnings on employer matching contributions are vested and the employee is entitled to receive employer matching contributions and earnings on those contributions as follows:
  - 1. If the employee has less than one year of credited service in an eligible group, zero per cent.
  - 2. If the employee has at least one year but less than two years of credited service in an eligible group, twenty per cent.
  - 3. If the employee has at least two years but less than three years of credited service in an eligible group, forty per cent.
  - 4. If the employee has at least three years but less than four years of credited service in an eligible group, sixty per cent.
  - 5. If the employee has at least four years but less than five years of credited service in an eligible group, eighty per cent.
  - 6. If the employee has at least five years of credited service in an eligible group, one hundred per cent.
- C. All nonvested employer contributions and earnings on those contributions may be used, to pay for the administrative costs of the plan.

Added by Laws 2001, Ch. 280, § 9 and Ch. 380, § 15.

Laws 2001, Ch. 280, § 11 and Ch. 380, § 17 provides:

**Sec. 11.            Termination of the defined contribution retirement plan option pilot program**

This act terminates the pilot program option for certain exempt state officers or employees and state elected officials who are subject to term limits to elect to participate in a defined contribution retirement plan option in lieu of participation in their respective state defined benefit retirement plans. All exempt state officers or employees and state elected officials who are subject to term limits and who elected on or before the effective date of this act to participate in the defined contribution retirement plan option established by laws 1999, chapter 329, section 6 shall continue to participate in that option pursuant to the irrevocable election made by the exempt state officer or employee or state elected official who is subject to term limits and the employer shall continue to contribute to each participating state elected official's or exempt state officer's or employee's account an amount equal to two and sixty-six hundredths per cent of the state elected official's or exempt state officer's or employee's gross salary.

**41-3016.01. Elected officials' retirement plan; public safety personnel retirement system; corrections officer retirement plan; termination July 1, 2016**

- A. The public safety personnel retirement system fund manager terminates on July 1, 2016.
- B. Title 38, chapter 5, article 3 is repealed on January 1, 2017.
- C. Title 38, chapter 5, article 4 is repealed on January 1, 2017.
- D. Title 38, chapter 5, article 6 is repealed on January 1, 2017.

Added by Laws 2006, Ch. 125, §§ 1, 2, and 3; effective retroactively to July 1, 2006.

**Constitution of Arizona, Article XXIX PUBLIC RETIREMENT SYSTEMS**

**Section 1.**

- A. Public retirement systems shall be funded with contributions and investment earnings using actuarial methods and assumptions that are consistent with generally accepted actuarial methods.
- B. The assets of public retirement systems, including investment earnings and contributions, are separate and independent trust funds and shall be invested, administered and distributed as determined by law solely in the interests of the members and beneficiaries of the public retirement systems.
- C. Membership in a public retirement system is a contractual relationship that is subject to article II, section 25, and public retirement system benefits shall not be diminished or impaired.